

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW MEXICO

3           UNITED STATES OF AMERICA,

4                               Plaintiff,

5                   vs.                               NO:   CR-15-4268 JB

6           ANGEL DELEON, et al.,

7                               Defendants.

8                                       VOLUME 2

9                   Transcript of Jury Trial before The Honorable  
10           James O. Browning, United States District Judge, Las  
11           Cruces, Dona Ana County, New Mexico, commencing on  
12           January 30, 2018.

13           For the Plaintiff: Ms. Maria Armijo, Mr. Randy  
14           Castellano, Mr Matthew Beck

15           For the Trial 1 Defendants: Ms. Amy Jacks,  
16           Mr. Richard Jewkes, Ms. Theresa Duncan, Mr. Marc  
17           Lowry, Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan  
18           Villa, Ms. Justine Fox-Young.

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1 THE COURT: All right. Good morning,  
2 everyone. I appreciate everybody -- we tried to get  
3 them to open the doors earlier. They wouldn't honor  
4 my request. I'm disappointed in the clerk's office,  
5 as well as you are, but I tried.

6 I'm going to send a note to the clerk of  
7 the court in Albuquerque asking him to open those  
8 doors at 7:30. We'll see if that gets it done, but  
9 my request for the local people didn't get it done,  
10 so my apologies. But I tried.

11 Is there anything we need to discuss  
12 before we go on the record?

13 Let me make a few announcements, and then  
14 we're not going to delay long. I'm going to go  
15 ahead and cut Diane Moore. These are three people  
16 that you agreed to. So Diane Moore, juror number 1,  
17 for cause; Mark Oldknow for cause, juror number 10;  
18 and Eric Billings, juror number 40, for cause.

19 The other hardship ones, I reviewed my  
20 notes. I think we need to probably talk about  
21 hardship, and so I'm not prepared to start sending  
22 those out. I'll certainly respect y'all's thoughts  
23 on them, but I'm going to keep them there.

24 Juror number 53, Elizabeth Winston, didn't  
25 get her cell phone, so she's not here. She's in the

1 very far corner. My suggestion is: It's going to  
2 be a while before -- you know, I'm going to ask a  
3 few more questions. I'm going to go a little deeper  
4 in the pool. So let me go ahead and ask some  
5 individual questions, and then we'll see where she  
6 is at the time that I get ready to turn it over to  
7 the Government. But I propose to handle it that  
8 way.

9 All right. Mr. Beck.

10 MR. BECK: Your Honor, I handed up the  
11 order for the grand jury transcripts to Ms.  
12 Standridge. As far as I know, we had some  
13 discussion that the end of the second paragraph says  
14 that the defendants will either turn them back over  
15 to the Government or destroy them at the end of the  
16 case. We're clarifying that the end of the case  
17 means the end of any defendant's appeal or  
18 collateral proceeding.

19 THE COURT: All right. So this order is  
20 unopposed with that understanding?

21 MS. JACKS: With that understanding, yes.

22 THE COURT: Okay.

23 MS. FOX-YOUNG: Your Honor, I think the  
24 language in the order needs to be changed because it  
25 says, "Upon request, all copies of the grand jury

1 material will be returned." If it's going to say,  
2 you know, at the end of the case --

3 THE COURT: I don't care. If y'all don't  
4 have an agreed order, take it back.

5 MR. BECK: Will do, Your Honor.

6 THE COURT: All right. All rise.

7 (The venire panel entered the courtroom)

8 THE COURT: All right. Everyone be  
9 seated.

10 Good morning, ladies and gentlemen. Thank  
11 you for being back and on time. I apologize that  
12 the clerks did not open the doors earlier. I asked.  
13 So I apologize. I'm sending a note to the clerk of  
14 the court in Albuquerque, and I will ask them to  
15 make sure that -- to see if I can get the doors open  
16 at 7:30, so you're not waiting outside. But I  
17 apologize. I asked the local people to do that, and  
18 they wouldn't do it. So I apologize to you, and  
19 we'll see if me going to the top of the clerk's  
20 office in Albuquerque will get that done, so that  
21 doesn't happen again.

22 Thank you for all you've done for us. I  
23 appreciate your patience yesterday. I appreciate  
24 y'all coming back. We've got one juror that ran  
25 back to get her phone, so we'll have one juror

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1 joining us here in a moment. But everybody else got  
2 here, and I really appreciate it. And I appreciate  
3 the way you went about answering mostly my questions  
4 yesterday, all day, and you're going to spend a  
5 little time this morning doing the same. I  
6 appreciate it. Then we're going to turn it over to  
7 counsel to see if they have additional direct voir  
8 dire they want to ask.

9 But obviously, we couldn't do what we do  
10 in this court if you didn't do what you do, and  
11 that's showing up, showing up on time, being ready  
12 to go, and then being very patient with the Court  
13 and with the counsel here in a moment to answer a  
14 lot of questions, and I really appreciate it.

15 All right. I'm going to come back to you  
16 Mr. Phillips. I told you I would look at your  
17 questionnaire overnight. I've now had a chance to  
18 do that. You're over from Hurley. Thank you very  
19 much. What kind of automotive work does your shop  
20 cater to?

21 MR. PHILLIPS: Mainly transmissions.

22 THE COURT: And what does your spouse do?

23 MR. PHILLIPS: My spouse is a  
24 microbiologist for the State.

25 THE COURT: All right. What was your

1 major field of study and vocational schooling?

2 MR. PHILLIPS: I went to trade school, two  
3 different ones. I went to beauty school and then I  
4 also went to automotive school.

5 THE COURT: All right. You said you  
6 visited racing sites. Is that cars or horses?

7 MR. PHILLIPS: Car.

8 THE COURT: Cars. All right. On your  
9 believing police officers, we talked a little bit  
10 about this yesterday. Do you think you would always  
11 believe law enforcement just because they take the  
12 stand, or would you try to look at law enforcement  
13 and make an individual decision as to whether that  
14 law enforcement officer is credible or not?

15 MR. PHILLIPS: No, you need to look at  
16 them to see if they're credible.

17 THE COURT: Okay. So you wouldn't always  
18 believe police officers just because they're police  
19 officers?

20 MR. PHILLIPS: No.

21 THE COURT: Okay. Thank you,  
22 Mr. Phillips.

23 I'm going to go over to Mr. Hefner over  
24 here. I think he is up in the corner over here.

25 You're down from Albuquerque with me.

1 What does your spouse do?

2 MR. HEFNER: She's an administrative  
3 assistant at Sandia.

4 THE COURT: At Sandia Labs?

5 MR. HEFNER: Yes, sir.

6 THE COURT: Okay. And are you retired, or  
7 self-employed, or what is your situation?

8 MR. HEFNER: I'm both of those.

9 THE COURT: What are you doing right now?  
10 You had self-employed. What are you doing?

11 MR. HEFNER: I've been a drywall  
12 contractor my whole life, so I still do some  
13 repairs.

14 THE COURT: Okay. And how many years of  
15 high school did you have?

16 MR. HEFNER: I didn't graduate from high  
17 school.

18 THE COURT: Okay. I was trying to figure  
19 out that -- you mentioned something. Let me see if  
20 I can find it. I think you indicated that you might  
21 know some -- the police chief and things. Do you go  
22 to the Believers Center there in Albuquerque?

23 MR. HEFNER: Yes.

24 THE COURT: Is that where you go? So you  
25 know Gorden Eden and Mary, they go to your church?

1 MR. HEFNER: I do.

2 THE COURT: All right. And sometimes -- I  
3 don't know if we've ever met. Sometimes I get  
4 invited by the pastor over there. Our daughters  
5 went to school at Hope together.

6 MR. HEFNER: Yes, the Townsleys, sir.

7 THE COURT: The Townsleys. And so they  
8 invited me over for their day of prayer at their  
9 church, so I've been to those. Have you been to  
10 those?

11 MR. HEFNER: Absolutely.

12 THE COURT: We might have run into each  
13 other.

14 Let me ask you a little bit about looking  
15 at these pictures that are going to be part of the  
16 evidence in this case. It says, "Do you feel it's  
17 possible you would not be able to look at such  
18 photographs?" And you said, "Yes."

19 If you were selected as a juror, do you  
20 think you could just buckle down and look at the  
21 photographs? Because you've got to look at the  
22 evidence in this case. I know you're not excited  
23 about it, but could you do it?

24 MR. HEFNER: I'd try to do it.

25 THE COURT: Okay. Well, I probably need a



1 little more, because you've got look at the evidence  
2 in the case, and that's going to be part of the  
3 evidence here. Could you do it?

4 MR. HEFNER: I can't give you a 100%  
5 guarantee. I'd try to do it.

6 THE COURT: All right. As far as being  
7 fair and impartial, do you think after looking at  
8 the photographs you could still be fair and  
9 impartial?

10 MR. HEFNER: Not a 100% guarantee on that  
11 either, sir.

12 THE COURT: Okay. All right. Healthwise,  
13 would you be okay to sit in court for six to eight  
14 weeks?

15 MR. HEFNER: Yes, sir.

16 THE COURT: All right. And let's see.  
17 Question 75. You indicated that justice and  
18 sentences are -- well, the question was: Is there  
19 any matter, including your past jury service, that  
20 may interfere with your duty as a juror to listen  
21 with an open mind to the evidence in this case and  
22 render an impartial verdict? And you said yes,  
23 there were some things, and what you listed is  
24 justice and sentences are too lenient. You get to  
25 have your right to those views on that. But can you

1 put that aside and not let it interfere with  
2 listening to the evidence and being fair and  
3 impartial to the parties in this case?

4 MR. HEFNER: I think so.

5 THE COURT: All right. Thank you,  
6 Mr. Hefner.

7 Let's see. I think we're going to go  
8 to -- I'm a little lost on my chart here. All  
9 right. Ms. Wolfe, down from Albuquerque as well.  
10 Thank you. What do you do?

11 MS. WOLFE: I work for Albuquerque Public  
12 Schools.

13 THE COURT: All right. And which  
14 particular school do you work at?

15 MS. WOLFE: I work in the administrative  
16 offices.

17 THE COURT: Okay. Over in the big  
18 building on Indian School?

19 MS. WOLFE: Oh, no, sir. I work in the  
20 M&O complex. I work for Capital Master Plan. We do  
21 the capital purchases, determine which schools need  
22 help and safety repairs.

23 THE COURT: And before your separation or  
24 divorce, what did your spouse do?

25 MS. WOLFE: Which one?

1 THE COURT: Okay.

2 MS. WOLFE: The last one worked for Fed  
3 Ex. The one before that worked for Albuquerque  
4 Public Schools at KANW Radio.

5 THE COURT: How many years of vocational  
6 school do you have?

7 MS. WOLFE: Three.

8 THE COURT: And what was your major field  
9 of study?

10 MS. WOLFE: Architectural engineering,  
11 drafting.

12 THE COURT: Thank you, Ms. Wolfe.

13 Mr. Gallegos, down from Albuquerque as  
14 well. Thank you. Where are you a teacher?

15 MR. GALLEGOS: At the Albuquerque Public  
16 Schools.

17 THE COURT: And which particular school?

18 MR. GALLEGOS: Atrisco Heritage High  
19 School.

20 THE COURT: What grade do you teach?

21 MR. GALLEGOS: I teach 11th and 12th  
22 grade.

23 THE COURT: Do you have any particular  
24 subject?

25 MR. GALLEGOS: AP U.S. history, AP

1 government and politics, and economics.

2 THE COURT: Remind me what is happening on  
3 March 23 through the 31st. That's your spring  
4 break; is that correct?

5 MR. GALLEGOS: Yes, that is a planned  
6 holiday, but looking at the calendar, it may not  
7 conflict with the length of the case.

8 THE COURT: So I think we're going to be  
9 done by then. So if that's what we're projecting,  
10 that's kind of our outside date, do you think you'd  
11 be okay to serve the next six to eight weeks?

12 MR. GALLEGOS: Yes. There would be  
13 work -- I'm worried about work, but personally, yes,  
14 I could.

15 THE COURT: Okay. I read your letter and  
16 I know it causes financial hardship, and I know that  
17 in your case maybe some professional development.  
18 But if you were chosen, do you think you'd be able  
19 to serve the six to eight weeks that this is  
20 projected?

21 MR. GALLEGOS: Like I said personally, the  
22 students would suffer, but I'd be okay.

23 THE COURT: Thank you, Mr. Gallegos. I  
24 appreciate it.

25 Ms. Smith, you're over from Clovis.

1 Ms. Wild grew up in Clovis. Do you know --

2 MS. SMITH: Yes, sir.

3 THE COURT: Do you know the Barnes family?

4 MS. SMITH: No.

5 THE COURT: Okay. Well, thank you very  
6 much. What brought you from Texas to New Mexico?

7 MS. SMITH: I had family that lived in  
8 Clovis.

9 THE COURT: And on your answer to question  
10 20, you said this is about your religious views or  
11 philosophical beliefs. It shouldn't, if it's a just  
12 trial, and then you put "unjust." I think everybody  
13 in this room is going to work very hard to make it a  
14 just trial. It takes me working hard, it takes the  
15 lawyers sitting here in the courtroom, and it takes  
16 the jury. Can you think of any way, given everybody  
17 is going to really try to put on a just trial -- do  
18 you think that there is any way your philosophical  
19 or religious views might interfere with your ability  
20 to be a juror?

21 MS. SMITH: No, sir.

22 THE COURT: And on question 57, which is  
23 one we discussed yesterday with some of the jurors,  
24 this is the one about -- I'll read the question.  
25 "If, after hearing the evidence, you thought the

1 defendant could be guilty but you were not convinced  
2 beyond a reasonable doubt, would you be able to  
3 return a verdict of not guilty?"

4 And you no. Let me ask you: Could you  
5 return a verdict of not guilty? Could you do that?

6 MS. SMITH: If I felt that they weren't  
7 guilty, I could not change my thoughts. If I knew  
8 without a shadow of a doubt that they were, if they  
9 were guilty and I knew it, I couldn't change that.

10 THE COURT: All right. Well, let's talk  
11 about that. Because the standard is not shadow of a  
12 doubt. That's not the standard. I don't know where  
13 that came from in the world, but it's not the  
14 standard. The standard that the Government has is,  
15 they've got to prove these four gentlemen guilty  
16 beyond a reasonable doubt. So using that standard --

17 MS. SMITH: Okay.

18 THE COURT: -- if the Government did not  
19 make their burden and did not prove beyond a  
20 reasonable doubt, could you vote not guilty?

21 MS. SMITH: Yes, sir.

22 THE COURT: Okay. All right. Thank you,  
23 Ms. Smith.

24 All right. Is Ms. Winston back there yet?  
25 Has she arrived? All right. So I'm going to hold

1 off on Ms. Winston. We're going to continue this  
2 individual, and I'm going to come over here to  
3 Mr. Laroche. What do you do?

4 MR. LAROCHE: I work for a general  
5 contractor in Albuquerque.

6 THE COURT: Okay. And what kind of  
7 construction -- now, I thought you lived here in Las  
8 Cruces. Am I wrong?

9 MR. LAROCHE: No, sir. I moved there.

10 THE COURT: You moved there. Okay. While  
11 these questionnaires were going on?

12 MR. LAROCHE: No, before.

13 THE COURT: Before. Okay. And what kind  
14 of construction does Pavilion Construction do?

15 MR. LAROCHE: Multifamily housing,  
16 generally like low-income housing.

17 THE COURT: Okay. Your significant other  
18 is a student; correct?

19 MR. LAROCHE: Yes.

20 THE COURT: And where is your significant  
21 other going to school? Here in Las Cruces at New  
22 Mexico State.

23 THE COURT: At what level?

24 MR. LAROCHE: She'll graduate in May.

25 THE COURT: And what is her major?

1 MR. LAROCHE: Hotel, restaurant, and  
2 tourism management.

3 THE COURT: Is that her career goal, to be  
4 in hotel management?

5 MR. LAROCHE: Yes.

6 THE COURT: You heard me yesterday say  
7 this is not a death penalty case.

8 MR. LAROCHE: Correct.

9 THE COURT: So given that, would you be  
10 able to serve on this case?

11 MR. LAROCHE: Absolutely.

12 THE COURT: And one question I wanted to  
13 ask of the questionnaire. This was -- you had put  
14 about people you know in law enforcement, and you  
15 said a relatively close friend from high school  
16 works at the federal courthouse in Albuquerque doing  
17 IT work. Who is that?

18 MR. LAROCHE: Jonathan Martin.

19 THE COURT: Okay. Is there anything about  
20 his work, your relationship with him, that would  
21 keep you from being fair and impartial to the  
22 parties here in this case?

23 MR. LAROCHE: Absolutely not.

24 THE COURT: Are you -- you had been  
25 planning, I think, to move to Denver. Did you end



1 up not moving to Denver and moving to Albuquerque  
2 instead?

3 MR. LAROCHE: We'll be moving in June.

4 THE COURT: Okay. On up to Denver?

5 MR. LAROCHE: Yes, sir.

6 THE COURT: But you're okay to serve the  
7 next six to eight weeks on this case if you're  
8 selected?

9 MR. LAROCHE: Yes, sir.

10 THE COURT: All right. Thank you,  
11 Mr. Laroche.

12 Ms. McAdams, you're over from Carrizozo.  
13 Thank you very much. What brought you from Michigan  
14 to New Mexico.

15 MS. McADAMS: My husband's job.

16 THE COURT: And what do you before you  
17 retired?

18 MS. McADAMS: I worked at retail  
19 management and restaurant management.

20 THE COURT: Okay. Are you working at  
21 Office Max right now?

22 MS. McADAMS: No, I retired.

23 THE COURT: You retired. Was that in  
24 Ruidoso? Is that where that was? Or where were  
25 you?

1 MS. McADAMS: No, that was in Michigan.

2 THE COURT: Oh, that was in Michigan.

3 Okay. And what does your spouse do? Is your spouse  
4 retired?

5 MS. McADAMS: He's retired. He worked for  
6 Motorola.

7 THE COURT: Worked for where?

8 MS. McADAMS: Motorola.

9 THE COURT: And that wasn't in Carrizozo;  
10 right?

11 MS. McADAMS: No, that was in New Mexico.

12 THE COURT: Oh, it was? Up here -- where?

13 MS. McADAMS: In Albuquerque. He covered  
14 the whole state.

15 THE COURT: How has your hearing been so  
16 far? Is it okay?

17 MS. McADAMS: It's been good.

18 THE COURT: Good. The acoustics work for  
19 you in the building?

20 MS. McADAMS: Yes.

21 THE COURT: The microphones, people talk  
22 in them, you're okay?

23 MS. McADAMS: Yes.

24 THE COURT: Thank you, Ms. McAdams.

25 Let's see. Ms. Gonzalez? Are you there?

1 MS. GONZALEZ: Yes.

2 THE COURT: And you were a teacher as  
3 well; right?

4 MS. GONZALEZ: Yes, sir.

5 THE COURT: My wife was a teacher for many  
6 years. She's recently retired. What did you teach?

7 MS. GONZALEZ: I taught elementary, 4th  
8 and 5th, sometimes 6th.

9 THE COURT: Okay. And you were not  
10 teaching a particular subject; you were just  
11 teaching all subjects?

12 MS. GONZALEZ: All subjects.

13 THE COURT: All right. You did not check  
14 anything on whether you had a hearing impairment.  
15 Do you have any hearing impairment?

16 MS. GONZALEZ: No, sir. I do not.

17 THE COURT: What you did in your blank, it  
18 said dates unavailability and you put 12 05 2017. I  
19 that I think was the date you filled out the  
20 questionnaire.

21 MS. GONZALEZ: Yes.

22 THE COURT: Did you have any dates of  
23 unavailability?

24 MS. GONZALEZ: No.

25 THE COURT: So you're okay to serve the

1 next six to eight weeks if you're selected?

2 MS. GONZALEZ: Yes, sir.

3 THE COURT: And again you've heard me say  
4 this. This is not a death penalty case, so you're  
5 okay to serve on this case?

6 MS. GONZALEZ: Yes.

7 THE COURT: All right. Thank you, Ms.  
8 Gonzalez.

9 Ms. Minton, you're over from Anthony.  
10 Thank you very much. What was your place of birth?

11 MS. MINTON: Well, I was technically born  
12 in LA. But when I was six months old, my parents  
13 moved back to El Paso. They're long-time Texas  
14 residents. And then I think it was '77 we moved out  
15 to a little two-acre piece of land in Anthony.

16 THE COURT: And what did your spouse do  
17 before retirement?

18 MS. MINTON: He worked for the El Paso  
19 Natural Gas Company. He was an accountant.

20 THE COURT: Over in Hobbs, I used to  
21 janitor for the El Paso Natural Gas Company.

22 MS. MINTON: Oh, yeah? You're a Jack of  
23 all trades, Your Honor.

24 THE COURT: There you go. I was a little  
25 young to go out to the oil fields, but I could still

1 drive at 16 and get out to the gas plants.

2 Again, this is not a death penalty case,  
3 so you think you'd be okay to serve on this case?

4 MS. MINTON: That would be fine.

5 THE COURT: I had one question from your  
6 questionnaire that I was going to ask you about. It  
7 said, 'Do you think your feelings involving people  
8 who sell or use drugs or your personal experiences  
9 involving drugs might influence you in a case where  
10 there are allegations of distribution of drugs?'

11 And you said yes. You said, "I believe  
12 they are stupid."

13 And let me ask you this. There may be  
14 some discussion of drugs in this case, and you're  
15 entitled to your views about drugs. Some people  
16 think they should be legalized, some don't. There  
17 are a whole bunch of views. Would you be able to  
18 put those aside for purposes of this case, just  
19 listen to the evidence here, not let those influence  
20 your decisions, and you could be fair and impartial  
21 to the parties here?

22 MS. MINTON: I do. They would have to  
23 prove also that they were doing drugs. So that  
24 remains to be seen.

25 THE COURT: And you know it's the

1 Government over here that has to do the proving;  
2 right?

3 MS. MINTON: Yes.

4 THE COURT: You're comfortable with that?

5 MS. MINTON: Yes, sir.

6 THE COURT: Thank you, Ms. Minton.

7 All right. Mr. Burton?

8 MR. BURTON: Yes, sir.

9 THE COURT: You're down from Albuquerque  
10 as well. What do you do?

11 MR. BURTON: I own a fund raising company  
12 out of Albuquerque.

13 THE COURT: Okay. And what are your  
14 clients? What does your client mix look like?

15 MR. BURTON: Schools, school groups. I'm  
16 one of the suppliers for the little kids that come  
17 around knocking on your door selling candy bars, so  
18 blame me.

19 THE COURT: The candy bars I like. It's  
20 those coupon books. Those are the ones that I --

21 MR. BURTON: I sell those, too.

22 THE COURT: Those are a little tougher for  
23 me. The candy bars, I can always give them to  
24 someone. Occasionally I eat them, which is a bad  
25 thing. All right. Thank you, Mr. Burton.

1 Mr. Fink, you're down from Albuquerque, as  
2 well. And you're part of the Parnall family.

3 MR. FINK: Yes, I am.

4 THE COURT: I know, of course, Judge  
5 Parnall. And Ted Parnall, you know, used to be the  
6 dean at the law school, so I knew him for a long  
7 time.

8 MR. FINK: Yes.

9 THE COURT: And you're a musician. And I  
10 don't know -- I've got a couple of discs from Judge  
11 Parnall. Are you on there?

12 MR. FINK: I am not.

13 THE COURT: You're not on there. What is  
14 a GIS programmer and coordinator? What is that?

15 MR. FINK: Geographic Information Systems.  
16 It's computer cartography.

17 THE COURT: And what kind of musician are  
18 you? Do you do the same thing that Judge Parnall  
19 does, or do you have a different style?

20 MR. FINK: I cover a wide range, from punk  
21 rock to bluegrass.

22 THE COURT: Okay. My wife was a music  
23 teacher, so music has been very much in our home,  
24 and she's taught me to enjoy a wide range of it.

25 You're a builder. What do you build?

1 MR. FINK: I have a small beehive building  
2 business, and I build guitars.

3 THE COURT: And the bee hives are actually  
4 the ones with the little bees in them?

5 MR. FINK: Yes, lots of little bees.

6 THE COURT: And the name of your band is  
7 what?

8 MR. FINK: One of them is called Pawn  
9 Drive.

10 THE COURT: Pawn Drive. I couldn't read  
11 that last word. And what's the other?

12 MR. FINK: WGF and Acids and Bases.

13 THE COURT: What does your spouse do?

14 MR. FINK: She's a designer.

15 THE COURT: Does she work for herself, or  
16 has she got an employer?

17 MR. FINK: Yeah.

18 THE COURT: And what was your major field  
19 of study?

20 MR. FINK: Architecture.

21 THE COURT: Have you ever been represented  
22 by an attorney before? You just didn't fill out  
23 that blank.

24 MR. FINK: I have not. My wife has.

25 THE COURT: And did you tell me that she



1 just is self-employed?

2 MR. FINK: Yes.

3 THE COURT: How has your hearing been so  
4 far.

5 MR. FINK: It's fine in the courtroom.

6 THE COURT: The acoustics have been  
7 working okay --

8 MR. FINK: Yeah.

9 THE COURT: -- if people talk in the  
10 microphone?

11 All right. Let's see. A couple of things  
12 you just didn't fill out I'm going to ask you about.  
13 Are there any additional matters touching upon your  
14 ability to serve as a juror that should be brought  
15 to the attention of the Court?

16 MR. FINK: I don't think so.

17 THE COURT: All right. And let me ask you  
18 a few questions about -- just clarification. What  
19 is New Mexico Geographic Information Council?

20 MR. FINK: It's the user group and  
21 coordinator for all the geographic information  
22 systems people in New Mexico.

23 THE COURT: And what are we kind of  
24 thinking of there? Map makers?

25 MR. FINK: It's computer mapping.

1 THE COURT: And what is Rocky Mountain  
2 Tool Collectors?

3 MR. FINK: It's an antique tool  
4 organization and I've involved on the board and I've  
5 been a past president.

6 THE COURT: My son works in the film  
7 industry in New York. He's got a vast collection of  
8 tools. But what would be considered an antique  
9 tools? Everything in my garage?

10 MR. FINK: I personally consider anything  
11 before World War II.

12 THE COURT: A few questions off your  
13 questionnaire. I want to talk to you -- it's this  
14 question that I'm not sure I worded very well in the  
15 questionnaire. "If, after hearing the evidence, you  
16 thought the defendant could be guilty but you were  
17 not convinced beyond a reasonable doubt, would you  
18 be able to return a verdict of not guilty?"

19 You didn't answer. You said, "I don't  
20 know." After sitting here and listening to the  
21 questions, if the Government can't prove to you  
22 beyond a reasonable doubt that these men are guilty,  
23 could you return a verdict of not guilty?

24 MR. FINK: I think I can, yes.

25 THE COURT: And let's see. One other.

1 Again, it says, "Where there are allegations such as  
2 conspiracy to murder, murder, and drug trafficking,  
3 will you have difficulty keeping an open mind until  
4 you've heard all the evidence, the arguments of both  
5 sides, and the judge's instructions?"

6 You didn't answer. You said, "I don't  
7 know."

8 I'm going to be telling you in my jury  
9 instructions, don't talk about the case with the  
10 jurors until the end of the case, until everybody  
11 has put on their evidence and there has been closing  
12 arguments and I've instructed you. So you're not  
13 going to be talking to anybody until that very end.  
14 Do you think you'd be able to wait to the end to  
15 make a decision until you go back to the jury room  
16 and not make a decision right after openings or  
17 right in the middle of evidence, wait til the very  
18 end? Do you think you'd be able to do that? That  
19 will be my instructions to you.

20 MR. FINK: I think so.

21 THE COURT: Let's talk a little bit about  
22 these exhibits. You had indicated that you thought  
23 your reaction to them might affect your ability to  
24 be fair and impartial. Given that we're going to  
25 wait till the end of the case before you make any

1 sort of decision, do you think you'd be able to just  
2 look at those pictures when they're in the courtroom  
3 and then wait until the very end of the case to  
4 decide the case, and you'd be able at that point to  
5 make a fair and impartial decision?

6 MR. FINK: Yeah, I think so. It's easy to  
7 say it now, but I don't really know what horrors are  
8 in store, you know.

9 THE COURT: Sitting there today, do you  
10 think you could do it?

11 MR. FINK: If you tell me to, yes.

12 THE COURT: Okay. Thank you, sir. I  
13 appreciate that.

14 One other question I wanted to ask you,  
15 Mr. Fink, was -- let's see. The question is, "Is  
16 there any matter, including your past jury service,  
17 that may interfere with your duty as a juror to  
18 listen with an open mind to the evidence in this  
19 case and render an impartial verdict based solely on  
20 the evidence or lack thereof and the judge's  
21 instructions and the law?"

22 And you said no, but you put a question  
23 mark there. Is there anything that is sort of in  
24 the back of your mind that you think we need to  
25 discuss that might impact upon your ability to be

1 fair and impartial?

2 MR. FINK: I don't know. I don't think  
3 so.

4 THE COURT: Okay.

5 MR. FINK: I don't know.

6 THE COURT: Sitting here today, you think  
7 you can tell me you can be fair and impartial?

8 MR. FINK: Yeah. I guess I'm kind of  
9 worried about exposing a lot of personal information  
10 at this point.

11 THE COURT: Well, you probably have done  
12 as much as you're going to be required. The lawyers  
13 may ask you some more, but probably it's not going  
14 to be along the line that I've just asked. But  
15 given that, if we're kind of in the ballpark of  
16 where we are now, do you think you'd be okay to be  
17 fair and impartial?

18 MR. FINK: I think so.

19 THE COURT: I know that if you were  
20 selected, this could interfere with some  
21 performances you have in January and February. If  
22 you are selected, do you think you could work around  
23 those?

24 MR. FINK: I won't really have a choice,  
25 will I?

1 THE COURT: I appreciate it, Mr. Fink.

2 Thank you.

3 All right. Did we get Ms. Winston back  
4 here?

5 THE CLERK: No, sir.

6 THE COURT: All right. Well, I'm not  
7 sure -- maybe she'll come in in a minute and we can  
8 decide what we want to do.

9 But let me just ask a general question of  
10 everybody. Having heard the questions put to you by  
11 the Court and all day yesterday and then again this  
12 morning, does any reason suggest itself to you as to  
13 why you could not sit on this jury and render a fair  
14 verdict based on the evidence presented to you and  
15 in the context of the Court's instructions to you on  
16 the law? Has anybody been sitting there and thought  
17 of something that would keep them from being fair  
18 and impartial and not being able to do their job of  
19 listening to the evidence here and rendering a  
20 verdict based upon my instructions? Anything else  
21 come up?

22 All right. I'm going to now permit  
23 counsel to conduct additional direct voir dire  
24 examination.

25 Mr. Beck, does the Government wish to

1 present further direct voir dire examination?

2 MR. BECK: It does, Your Honor. I think  
3 maybe the defense had some more witnesses that it  
4 wanted to read off, if I remember, from yesterday.

5 MS. DUNCAN: All right. Do you want to do  
6 that, Ms. Duncan?

7 MS. DUNCAN: Thank you, Your Honor.

8 THE COURT: Do you want to tell the jurors  
9 what you're doing? Because they're going to hear  
10 names they heard yesterday. Why don't you just tell  
11 them what you're doing.

12 MS. DUNCAN: Good morning, everyone. I  
13 know we read some witness names to you yesterday to  
14 ask if you knew them, but we realized on the defense  
15 side that we missed some, so I'd like to read  
16 another list. So there may be some names you've  
17 already heard, but some you haven't. If you could  
18 just let us know if you recognize anyone from this  
19 list.

20 James Mulheron, William Edgman, Amy  
21 Guerrero, Crystal Salas, Darren White, Phil White,  
22 Brack Rains, Kresten Eoff, Corey Henn, Robert  
23 Sanchez, Jesse Sedillo, Andre Lamar Green, John  
24 Watts, Ty Stevens, Sandy Rayel, Michael P. Currier,  
25 Roy Lee Leon, Gary Ainsworth, Peso Chavez, Christian

1 Filipiak, Andy Primm, Jacob Gomez, Julie Lopez,  
2 Keith Miller, Jonathan McPherson, Estevan Flores,  
3 Robert Cathey, Jodi Upshaw, and Ronald Cardon.

4 THE COURT: All right. Thank you. Do you  
5 want to ask questions about what you've just listed  
6 there, Ms. Duncan?

7 MS. DUNCAN: I have no questions.

8 THE COURT: All right. Okay. Does  
9 anybody know any of the people that Ms. Duncan  
10 listed?

11 All right. Let's see. Why don't you come  
12 up to the bench here, Mr. Dixon, and we'll see who  
13 you know.

14 (The following proceedings were held at  
15 the bench.)

16 THE COURT: How are you doing?

17 MR. DIXON: Good.

18 THE COURT: Let's let the attorneys get up  
19 here here. Which one do you know?

20 MR. DIXON: Andy Primm is my  
21 brother-in-law.

22 THE COURT: It's your brother-in-law?

23 MR. DIXON: Yes.

24 THE COURT: Are you pretty positive?

25 MR. DIXON: Musician.



1 MS. DUNCAN: I'm not sure.

2 THE COURT: Whose witness is that, Andy  
3 Primm? Whose witness is that?

4 MS. DUNCAN: Your Honor, no, I think that  
5 may have been a leftover from Christopher Garcia. I  
6 was reading from the joint defense supplemental  
7 exhibit list.

8 THE COURT: So he's not a witness?

9 MS. DUNCAN: I'm talking to the other  
10 lawyers. They're not claiming him.

11 THE COURT: He's not going to be a  
12 witness.

13 MR. DIXON: Okay.

14 THE COURT: Do you have any questions?

15 MR. BECK: No, Your Honor, thank you.

16 (The following proceedings were held in  
17 open court.)

18 THE COURT: Before I turn it over to Mr.  
19 Beck, I'm going to go ahead and ask one more person.  
20 Is Mr. Moore back there? I've got to ask you  
21 because you're from Hobbs; right, Mr. Moore?

22 MR. MOORE: Yes.

23 THE COURT: All right, thank you.

24 Appreciate it. Is the Pizza Inn, the one that's  
25 over on Grimes -- is that where you work? Are those

1 yours?

2 MR. MOORE: Yes. The one in Hobbs and the  
3 one in Carlsbad also.

4 THE COURT: But they're the ones over on  
5 Grimes; right?

6 MR. MOORE: Right.

7 THE COURT: What does your spouse do?

8 MR. MOORE: She works in the business.  
9 She does all the bookkeeping and payroll and stuff.

10 THE COURT: For the Pizza Inn?

11 MR. MOORE: Yes.

12 THE COURT: So the Pizza Inn is your  
13 employer and her employer?

14 MR. MOORE: Yes.

15 THE COURT: All right. And again, I want  
16 to ask a question on the police officers. I'm  
17 pretty sure that's the one I wanted to ask you  
18 about. No, these are the presumption of innocence.  
19 You had indicated that it's likely these people that  
20 are brought to trial are guilty. You said yes, but  
21 you said there might be some evidence, but you also  
22 said guilt must be proven, not assumed. And the  
23 second question, you said, "There must be some truth  
24 to the charges and given the circumstances, I would  
25 have to believe likely."

1           Let me ask you -- we talked a lot about  
2 the presumption of innocence yesterday. Could you  
3 presume these four gentlemen to be innocent and not  
4 worry about how they got here, what the evidence  
5 was, or any circumstances; just presume them  
6 innocent and force the Government to prove them  
7 guilty beyond a reasonable doubt? Would you be able  
8 to do that?

9           MR. MOORE: Oh, yes, sir.

10          THE COURT: So you won't be thinking about  
11 how they got here or anything like that?

12          MR. MOORE: No, sir.

13          THE COURT: All right. Thank you  
14 Mr. Moore.

15               All right, Mr. Beck, if you wish to  
16 conduct some additional direct voir dire  
17 examination. Did anybody recognize any names off  
18 Ms. Duncan's list?

19               All right. Mr. Beck.

20          MR. BECK: Thank you, Your Honor.

21               May it please the Court, since it's been a  
22 long time, I just want to let you know, I don't  
23 anticipate I will go much longer than the judge did.  
24 He took all my good questions.

25               I just want to re-introduce myself. I

1 introduced myself yesterday morning. I'm Matt Beck.  
2 With Maria Armijo and Randy Castellano, we're the  
3 assistant U.S. Attorneys. Special Agent Bryan Acee  
4 with the FBI. And this is Wendy Kluda (phonetic).  
5 She's helping us out today.

6 Thank y'all for being here. As the judge  
7 said, this is one of our most important civic  
8 duties. He took a lot of what I was going to talk  
9 about out of my mouth, but I just want to make sure  
10 that everyone here still feels as they did  
11 yesterday, that they can presume these four  
12 defendants innocent until proven guilty. Because  
13 that is an important constitutional guarantee. Is  
14 there anyone who has changed their mind since  
15 yesterday and believes that they cannot do so?  
16 Please raise your hand.

17 Okay. I'm not seeing anyone. Thank you.

18 Another important constitutional guarantee  
19 is the right to a fair jury trial. And the judge  
20 talked to you a lot yesterday about the presumption  
21 of innocence. At some point in this trial the judge  
22 will also instruct you that that right includes the  
23 right to a fair jury, one that will set aside their  
24 prejudice, their bias, and any sympathy that they  
25 may have, and render a verdict as to these four

1 defendants based only on the proof you hear here in  
2 court. Now, can we all understand why that's an  
3 important thing if we have a fair jury trial system?  
4 So if at the end of this six to eight weeks -- not  
5 six to eight months -- we get to the point where  
6 you're selected, you go back in that room, it's  
7 important that everyone decide these men's guilt  
8 based only on the evidence and proof you hear here  
9 in court; and if you find them guilty, it's only  
10 because that proof and evidence from the Government  
11 has proved their guilt beyond a reasonable doubt.  
12 You have to set aside any bias or prejudice you may  
13 have.

14           On the same side, I think it's also very  
15 important that you set aside empathies. Can  
16 everyone understand why, if we set aside bias and  
17 prejudice, we have to set aside sympathies and  
18 empathies we may have? Because if, at the end of  
19 this trial, in six to eight weeks, you get back in  
20 that jury room and you find these four defendants  
21 innocent, the judge will instruct you that's only  
22 because the proof and the evidence that you heard  
23 over those six to eight weeks didn't prove beyond a  
24 reasonable doubt their guilt.

25           Now, when the judge instructs you that, is

1 there anyone here who cannot set aside those biases  
2 and prejudice and sympathies, and not set those  
3 aside and just listen to the evidence? If there is,  
4 please raise your hand.

5 Okay. And you are Ms. Yatsattie; right?

6 MS. YATSATTIE: Yes, sir.

7 MR. BECK: Ms. Yatsattie -- and this goes  
8 for anything I may ask you this morning. If you  
9 don't feel comfortable sharing out loud, the Judge  
10 has warmed up the room, and I thank him for that,  
11 but if you don't feel comfortable, you may ask to  
12 approach the bench. Ms. Yatsattie?

13 MS. YATSATTIE: So I've spent basically my  
14 entire career helping kids use their peer pressure  
15 in a positive way. I work for a nonprofit  
16 organization, and basically I've spent my career  
17 making sure that kids don't join gangs. And so for  
18 me, it's a life-long career to help kids and make  
19 positive choices versus people that encourage the  
20 negative peer pressure; just kind of has, you know,  
21 a bias effect on me because that's the career that  
22 I've chosen.

23 MR. BECK: I understand, Ms. Yatsattie.  
24 Thank you for sharing that. And I just want to  
25 follow up a little bit. The judge at the beginning

1 of this read to you what the case is about. Do you  
2 recall that?

3 MS. YATSATTIE: Yes.

4 MR. BECK: And he also said that that is  
5 based on the Government's indictment, so our  
6 indictment, and those are charges. There hasn't  
7 been any evidence presented yet. Do you understand  
8 that?

9 MS. YATSATTIE: Yes, sir.

10 MR. BECK: So as we have established, at  
11 this point you're able to presume that these  
12 defendants are innocent of everything that the judge  
13 read out out loud; is that right?

14 MS. YATSATTIE: For the time being, yes.

15 MR. BECK: Okay. Now if we do -- if  
16 evidence comes out in this case, if the United  
17 States presents proof that these defendants are gang  
18 members, I think -- would that affect your bias and  
19 prejudice that you were just talking about?

20 MS. YATSATTIE: It would almost encourage  
21 it to convict them.

22 MR. BECK: Now, understand that we all  
23 bring certain things to the court: Reason, common  
24 sense, and those are what you'll use as tools in  
25 here. Do you understand what reason and common

1 sense -- the tools in your background?

2 MS. YATSATTIE: Yes.

3 MR. BECK: And those are fine to use in  
4 the trial. Do you understand that?

5 MS. YATSATTIE: Yes.

6 MR. BECK: What you can't use is those  
7 biases and prejudice and sympathies you may have.  
8 You understand the difference there?

9 MS. YATSATTIE: Correct.

10 MR. BECK: So if the judge instructs -- if  
11 you're chosen to be on this jury and the judge  
12 instructs you that part of your duty is to set aside  
13 those biases and prejudices and just listen to the  
14 proof, can you not do that, given what --

15 MS. YATSATTIE: It would make it very  
16 difficult, like I said.

17 MR. BECK: Thank you for sharing that. I  
18 appreciate that, Ms. Yatsattie.

19 Is there anyone else who feels at this  
20 point they may not be able to set aside their bias,  
21 prejudice, or sympathy? I'm not seeing any hands.

22 So I want to delve a little bit deeper  
23 into that. Let's talk about the elephant in the  
24 room. I look very different than anyone else here.  
25 I'm wearing a bow tie. And you may laugh, but I've



1 heard from people that some people don't like bow  
2 ties. And I, as a lawyer, don't have the right that  
3 these defendants do. You can hold that against me.  
4 You can say, "I don't like bow ties. I don't like  
5 Mr. Beck." That's fine.

6 But if there is something about these  
7 defendants that raises that concern for you, that  
8 may be a bias or prejudice that would keep you from  
9 being the right person to sit on this jury.

10 Does anyone know what a man bun is? Raise  
11 your hand. All right. Good. Let's go with  
12 Ms. Harris. Ms. Harris, what's a man bun?

13 MS. HARRIS: A ridiculous hairstyle.

14 MR. BECK: I like her answer. That's what  
15 I was going to say. I don't like a man bun. I  
16 think maybe some people can pull it off. Maybe Brad  
17 Pitt. But some people can't. Okay? That may be a  
18 bias or prejudice that I bring to the table.

19 Some of you may think the same thing.  
20 Again, we have those, but it's important for us to  
21 be able to set aside those biases, prejudices, and  
22 any sympathies we have as jurors.

23 Ms. Harris, would you be able to set aside  
24 any bias, prejudice, or sympathy you have in this  
25 case and listen to the evidence?

1 MS. HARRIS: Yes, I will.

2 MR. BECK: Thank you. Does everyone agree  
3 with Ms. Harris? Everyone except, as we've spoken  
4 with Ms. Yatsattie, everyone else agrees they're  
5 able to set aside biases, sympathies, and prejudice.  
6 Thank you.

7 The next thing I want to talk about here  
8 is our burden of proof. The Judge has talked a lot  
9 about the burden of proof that we have in this case,  
10 beyond a reasonable doubt.

11 Now, Ms. Montes, I believe yesterday you  
12 said that you would have to be certainly sure to  
13 find the defendants guilty. Do you recall saying  
14 that?

15 MS. MONTES: I want to look at all the  
16 evidence, and if I think they're not guilty, they're  
17 not guilty. Because right now they're all innocent.

18 MR. BECK: Thank you. And that's correct.  
19 I think you said yes, you recall saying certainly  
20 sure yesterday. Do you recall that?

21 MS. MONTES: I didn't understand the  
22 question.

23 MR. BECK: So yesterday I think when the  
24 judge asked you about that yesterday, you said, "I  
25 would have to be certainly sure that they're guilty

1 to find them guilty." Do you remember that? And if  
2 you don't, that's okay.

3 MS. MONTES: They've got to prove them  
4 guilty to me.

5 MR. BECK: Okay.

6 I think she said that "They've got to  
7 prove them guilty to me."

8 And that's right. That's our word.

9 Earlier today we heard "beyond a shadow of  
10 a doubt." That also is not the standard. The judge  
11 will instruct you to the standard as to what "beyond  
12 a reasonable doubt" means. He will tell you that  
13 that does not mean beyond all possible doubt.

14 Earlier the judge asked a couple people if  
15 the United States put on its case and showed you the  
16 proof and back in that jury room in six to eight  
17 weeks, you thought the four defendants were guilty,  
18 but not beyond a reasonable doubt, could you find  
19 them innocent? And I think all of you said to the  
20 judge's question yes, because that is the standard.  
21 You have to find beyond a reasonable doubt. But on  
22 the other side of that, it doesn't mean beyond all  
23 possible doubt or impossible doubt.

24 Is there anyone here who, at the end of  
25 these four to six weeks, if we put on our proof and

1 you go back in that jury room, and after hearing all  
2 that proof you think the United States didn't prove  
3 them beyond all possible doubt, you had some  
4 possible doubt, is there anyone here who could not  
5 find the defendants guilty if we met our burden  
6 beyond a reasonable doubt? Please raise your hand.

7 So will you all promise me that after the  
8 judge instructs you about what beyond a reasonable  
9 doubt means, if you find that the proof in this case  
10 establishes these four men's guilt beyond a  
11 reasonable doubt, that you will find them guilty?  
12 Is there anyone who cannot make that promise? Thank  
13 you.

14 I want to talk about anxiety versus doubt.  
15 Mrs. Taylor. I think you said yesterday  
16 that you had recently purchased a home; is that  
17 right?

18 MS. TAYLOR: Yes, I did. Thank you.

19 MR. BECK: Congratulations. When you were  
20 going through that process, did you all consider a  
21 few different homes, or did you just build a house  
22 or look at one house?

23 MS. TAYLOR: No, I think we looked at 11  
24 or 12. I think this was the 12th one that we chose.

25 MR. BECK: I'm sorry for your real estate

1 agent. Now, were there good and bad things about  
2 all of those 11 or 12 homes that you looked at?

3 MS. TAYLOR: Oh, yes. Several bad things.

4 MR. BECK: Okay. And when you bought this  
5 home, did you take out a mortgage or did you pay in  
6 cash?

7 MS. TAYLOR: VA mortgage.

8 MR. BECK: VA mortgage. Great. Buying a  
9 house is an important decision; is that right?

10 MS. TAYLOR: Yes.

11 MR. BECK: It's one of the biggest  
12 purchases we do in our lives.

13 MS. TAYLOR: Yes.

14 MR. BECK: Now, when you went in there,  
15 into the office where you signed the closing  
16 paperwork, did you feel nervous or anxious about  
17 that decision?

18 MS. TAYLOR: No, not that day.

19 MR. BECK: At any other time did you feel  
20 nervous or anxious?

21 MS. TAYLOR: Yes, the 30 days before.

22 MR. BECK: Okay. So the 30 days before,  
23 you felt nervous or anxious. Did you ever think to  
24 yourself that maybe a better home for us would come  
25 on the market, that maybe if we're buying this house

1 right now, there may be a more perfect home out  
2 there that we would lose out on?

3 MS. TAYLOR: No, I did not.

4 MR. BECK: Great. Well, that sounds like  
5 a great house.

6 Did you ever have any concern that maybe,  
7 you know, it was a little stretched and you'd have  
8 to pinch your pennies to meet that mortgage, and  
9 something in the future may come up and may present  
10 a problem for that mortgage? Did you ever have that  
11 concern?

12 MS. TAYLOR: No, I did not.

13 MR. BECK: Wow. I'd love to be in her  
14 shoes.

15 Do you understand how that may cause  
16 anxiety, though, that decision to purchase a home,  
17 to take out a mortgage?

18 MS. TAYLOR: Yes, I do.

19 MR. BECK: But even with that, in the 30  
20 days before, you still went through with that  
21 decision; is that right?

22 MS. TAYLOR: That's correct.

23 MR. BECK: So you understand that, what  
24 I'm talking about when I say that some big decisions  
25 may cause us anxiety?

1 MS. TAYLOR: Yes.

2 MR. BECK: Is there anyone else who has  
3 had a decision lately that's caused them anxiety?  
4 Yes. And you are?

5 MS. QUINONES: Quinones. Dora Quinones.  
6 I'm really seriously thinking about selling my home  
7 in Deming and moving with my daughters here in Las  
8 Cruces, because they don't want me there by myself.  
9 So that is in my mind, but that's going to be  
10 sometime in the summer, but that's making me very  
11 nervous.

12 MR. BECK: Thank you for sharing that,  
13 Ms. Quinones.

14 And thank you, Ms. Taylor.

15 Now, Ms. Quinones, it sounds to me like  
16 you have some anxiety or doubt in selling your home  
17 and moving in with your daughters. Would you mind  
18 telling us about that?

19 MS. QUINONES: Well, no, it's just that I  
20 have lived in that home already for about 38 years,  
21 so it's hard for me to let go of the house. And if  
22 I do move to Las Cruces, I'll probably buy a small  
23 little home here, because the one in Deming is way  
24 too big for me.

25 MR. BECK: So it sounds like you have put

1 a lot of thought into this decision to sell your  
2 house --

3 MS. QUINONES: Yes.

4 MR. BECK: -- and move in with your  
5 daughters. And that decision you may have anxiety  
6 about, whether to go through with that; is that  
7 right?

8 MS. QUINONES: That is correct.

9 MR. BECK: And so weighing all those  
10 decisions and those anxieties, at some point you  
11 will come to a decision and decide whether to sell  
12 your house and move down here to Las Cruces; is that  
13 right?

14 MS. QUINONES: That is correct.

15 MR. BECK: And you may not even at that  
16 point be 100 percent sure that it's not right for  
17 you; is that fair to say?

18 MS. QUINONES: That is fair to say.

19 MR. BECK: Does everyone understand that  
20 we make important decisions in our lives and we may  
21 feel anxious, anticipate those decisions, but that's  
22 a difference between doubt? Does everyone  
23 understand that?

24 I see everyone nodding their heads.

25 Is there anyone who thinks at the end of



1 this trial, after you've heard all the Government's  
2 proof, understanding that you may be anxious in  
3 rendering a judgment, a verdict against these four  
4 defendants -- is there anyone who thinks that's just  
5 too much pressure to be under that sort of anxious  
6 decision, and they can't -- if the proof establishes  
7 these men's guilt beyond a reasonable doubt, that  
8 they just can't check that "guilty" box on a verdict  
9 form? Is there anyone who thinks that? Please  
10 raise your hand.

11 Thank you. So you all can commit to me  
12 that if the proof at the end of this case  
13 establishes their guilt beyond a reasonable doubt,  
14 even if you're anxious, you'll be able to check that  
15 "guilty" box on the verdict form. Thank you.

16 I just went four pages of notes, so I  
17 thank the judge for that one.

18 All right. The next thing I want to -- do  
19 we have another microphone in here? All right.  
20 This will be helpful. I can't reach all the folks  
21 back here.

22 So Ms. May, do you mind if I ask you a  
23 couple questions? You don't have to speak if you  
24 don't want to. Sorry. I yell into it, so it sounds  
25 a little bit softer.

1 I want to rob a bank with you. Okay?

2 MS. MAY: Okay.

3 MR. BECK: In this case you're going to  
4 hear about, as the judge said, conspiracy. And the  
5 judge is going to instruct all of you what  
6 conspiracy means. But for purposes here, it's just  
7 going to be some kind of legal word for agreement.  
8 Okay?

9 So you and I are going to rob a bank,  
10 Ms. May. Is that right?

11 MS. MAY: I guess so.

12 MR. BECK: Okay. I like that. Don't  
13 worry. I've got the security code. I'm going to  
14 make sure the cameras are off. I've got the code to  
15 the vault. All you have to do is go in there  
16 wearing a ski mask, just hand the note to the teller  
17 with the code, and you'll get all the money. All  
18 right?

19 MS. MAY: Okay.

20 MR. BECK: Okay. Great, Ms. May. Thank  
21 you.

22 Now, Ms. Taylor, next to you, she's the  
23 bank teller, and she's also working with us to rob  
24 this bank. But she doesn't want you to know.

25 You don't want her to know, do you, Ms.

1 Taylor?

2 MS. TAYLOR: No, I don't want her to know.

3 MR. BECK: No, she doesn't want you to  
4 know. She's the one who gave me the codes and she's  
5 going to make sure that the security cameras are  
6 turned off. So you're going to be good to go. I  
7 don't want you to have any reservation. All right,  
8 Ms. May?

9 MS. MAY: Okay.

10 MR. BECK: So Ms. Taylor, she's ready to  
11 turn off the security cameras, she's given us the  
12 codes, we're good. But we also need a getaway  
13 driver.

14 Ms. Smith, will you be our getaway driver?

15 MS. SMITH: Yes.

16 MR. BECK: You'll be our getaway driver?  
17 And it's easy. All you've got to do is drive  
18 Ms. May to the bank, wait outside, and drive her  
19 home. We want, you know, a really dependable,  
20 trusty car. So you've got that good 1967 Dodge  
21 Dart. It runs most of the time, electric blue. You  
22 know, really discreet. So you'll do that with us,  
23 Ms. Smith?

24 MS. SMITH: Yes.

25 MR. BECK: All right. Good. And of

1 course, I'm a fair guy. I'm coming up with the  
2 plan, but we're going to split it 50/50. 50 for me,  
3 50 to split between all of you. So I'm very fair.  
4 But I'm going to be in Las Vegas. I'm going to be  
5 at Circus Circus, just on the phone, making sure  
6 everything goes good. All right? But I provided  
7 the plans, I hooked all you guys up. None of you  
8 know that the other one is involved. It's an easy  
9 deal. Obviously, Ms. Smith will drive Ms. May and  
10 figure that out.

11 So we're going to rob this bank. Of  
12 course, everything falls apart. Right? Ms. Taylor  
13 couldn't switch off the security cameras. The bank  
14 changed the codes. No fault of yours, Ms. Taylor.  
15 I understand that. You may get cut out. That's up  
16 to those other two. And of course the trusty 1967  
17 Dodge Dart won't start back up again; right? After  
18 Ms. Smith tries to start it up outside the bank, the  
19 police come, everyone gets arrested. Okay?

20 Now, Ms. Smith, is Ms. May guilty of  
21 conspiracy to rob that bank?

22 MS. SMITH: Well, if I was a good friend,  
23 she wouldn't be.

24 MR. BECK: Did she participate in the  
25 crime to rob that bank?

1 MS. SMITH: Yes.

2 MR. BECK: Ms. May, I'm sure you're a good  
3 friend, but is Ms. Smith guilty of an agreement to  
4 rob that bank with you?

5 MS. MAY: Yes.

6 MR. BECK: Yes, okay. So Ms. May, is  
7 Ms. Smith guilty of a conspiracy to rob that bank?

8 MS. MAY: Unfortunately, we all are.

9 MR. BECK: Correct. So I was going to ask  
10 you if Ms. Taylor was guilty. Even though you  
11 didn't know she was involved, is she also guilty?

12 MS. MAY: Yes.

13 MR. BECK: Now, please hand the microphone  
14 back to Mr. Gallegos behind you.

15 Mr. Gallegos, for the \$64,000 question  
16 here, am I guilty of a conspiracy to rob that bank?

17 MR. GALLEGOS: Yes.

18 MR. BECK: What did I do? I was in Vegas.  
19 I wasn't even there.

20 MR. GALLEGOS: You were the mastermind.

21 MR. BECK: All right. Fair enough. Fair  
22 enough. So we're all guilty.

23 Is there anyone who disagrees with what  
24 those folks said? Is there anyone who disagrees  
25 that I'm guilty of that conspiracy? Raise your

1 hand.

2 Anyone who disagrees that any of those  
3 three ladies are guilty, raise your hand.

4 Okay. Back in the back, you are Mrs. --  
5 let me see. I'm going to test my knowledge here  
6 Liebhart. Ms. Liebhart?

7 MS. LIEBHART: Yes. Listening to the  
8 story, I would want more information before I made a  
9 determination if they were guilty about the  
10 conspiracy, because who knows if you were saying,  
11 "I'm going to hurt your child if you don't do this,"  
12 or something else, if there is some bribery or  
13 something else involved. So I couldn't say they  
14 were guilty of it. I would want to find out who the  
15 mastermind was, though.

16 MR. BECK: Well, who is the mastermind?

17 MS. LIEBHART: You.

18 MR. BECK: Yeah. So you already know  
19 that. Now, Ms. Liebhart, thank you. If you wanted  
20 to go home, you may have just lost out on that  
21 opportunity. So we'll invite you to stay for six to  
22 eight weeks. But I'm going to ask you, just on  
23 those facts presented -- because again, we're just  
24 judging it on the evidence in court that you hear,  
25 so you can't speculate -- and the judge will

1 instruct you on this, that you can't speculate what  
2 the evidence may be or what it would otherwise be.  
3 Just on the evidence you hear in court, just on that  
4 story you just heard --

5 MS. LIEBHART: Okay.

6 MR. BECK: -- do you believe that they're  
7 all guilty of conspiracy?

8 MS. LIEBHART: That's hard for me to  
9 answer.

10 MR. BECK: Fair enough. I'll leave it at  
11 that. The judge is good at pressing buttons. I'm  
12 not really that good at it.

13 All right. So now, we go to court, and  
14 Ms. May, Ms. Taylor, and Ms. Smith -- their lawyers  
15 make an agreement that they're going to help with  
16 the Government's case to prosecute me, that they're  
17 going to cooperate in the case under an agreement  
18 with the Government to help prove the case against  
19 me. Okay? And the judge will instruct you that  
20 agreements, plea agreements like that are lawful and  
21 that the rules of the court specifically provide for  
22 them. The law allows those three ladies, Ms. May,  
23 Ms. Taylor, and Ms. Smith, to help the Government  
24 prove its case against me. And in exchange for  
25 this, they may at the end of it get some benefit

1 from the Government to help prove the case against  
2 me. Is there anyone who can't believe their story  
3 or has a hard time believing their story if they  
4 went to court and testified against me?

5 MS. APODACA: Would we know that there was  
6 a plea agreement?

7 MR. BECK: So you may -- again, we're  
8 doing it just on the facts in court; right? You  
9 can't speculate what the evidence may be. But I  
10 told you that there is an agreement. So yes, so in  
11 this hypothetical here, you know that they are  
12 testifying under an agreement where they might  
13 receive a benefit for their testimony to help  
14 convict me. Would you not believe their story  
15 because of that?

16 MS. APODACA: I have no idea.

17 MR. BECK: Fair enough. And that's fine.  
18 Right? How would you judge their testimony? Would  
19 you judge it based on what they say in court, how  
20 they present themselves, whether their story is  
21 credible?

22 MS. APODACA: Yes, I would have to.

23 MR. BECK: There is anyone who disagrees  
24 with Ms. Apodaca, and they wouldn't listen to  
25 Ms. May and Ms. Taylor and Ms. Smith's story? They



1 wouldn't look at them up on the stand, judge their  
2 credibility, and listen to what they say as they  
3 testify against me as the mastermind of that  
4 conspiracy? Is there anyone who wouldn't do that?  
5 Please raise your hand.

6           So I gather from that that there is no one  
7 in here who, just because they're in an agreement,  
8 would discredit their testimony. Everyone would  
9 listen to what they say on the stand, look at how  
10 they present themselves, listen to whether their  
11 story lines up and corroborates other proof in the  
12 case? Okay. Thank you.

13           I want to talk about now direct and  
14 circumstantial proof. The judge will also give you  
15 instructions on the difference between what you'll  
16 have in this case as direct and circumstantial proof  
17 or direct and circumstantial evidence.

18           We've all seen those movies or crime  
19 dramas where someone gets up and they show  
20 someone -- you know, a defendant who is facing  
21 charges -- and he says, "I'm never going to prison.  
22 Their case against me is all circumstantial  
23 evidence." We've all seen that; right?

24           All right. Now I want to talk to you a  
25 little bit more. Mr. McNair, okay. So you're

1 heading home from work; right? You work at White  
2 Sands, you said? Perfect. That's why I picked you.  
3 It's going to work. So you're headed home from work  
4 at White Sands. That morning you watched the news  
5 and the weather lady said 60 percent chance of snow,  
6 because that's as high as we ever get. So it's  
7 definitely going to snow, right, here with 60  
8 percent chance?

9 MR. McNAIR: No.

10 MR. BECK: All right. Well, if you wanted  
11 to go home, you may have just lost also. For me, 60  
12 percent -- I mean, here in Las Cruces we get 60  
13 percent, I'm thinking it's going to snow. So you're  
14 headed home from work, the sky is cloudy, it's dark,  
15 it's nighttime, you're headed home, it's cold  
16 outside, and all of a sudden you start to see little  
17 white flakes hit your roof as you're heading home.

18 You get home, pull into your house, get  
19 inside, and your good friend from Mississippi calls.  
20 That's where you're from; right? Mississippi?  
21 Right?

22 MR. McNAIR: (Nods.)

23 MR. BECK: And your good friend from  
24 Mississippi calls. And she says, "Mr. McNair, how's  
25 the weather out there in Las Cruces, in White

1 Sands?"

2 What's the weather like? What are you  
3 going to tell her?

4 MR. McNAIR: 60 percent chance of snow  
5 this morning.

6 MR. BECK: Are you going to tell her it's  
7 snowing?

8 MR. McNAIR: Unfortunately, that happens  
9 to me all the time. From my classroom at Holloman,  
10 I'm generally getting back 10:00, and that time of  
11 year there's snow; as soon as I get down to the  
12 other side, it stops.

13 MR. BECK: So you're going to tell her  
14 it's snowing on top?

15 MR. McNAIR: Yes.

16 MR. BECK: How do you know that?

17 MR. McNAIR: Because I drove through it.

18 MR. BECK: Right. You saw the snow.

19 MR. McNAIR: Not circumstantial.

20 MR. BECK: Right. Direct proof. Same  
21 exact set of facts, right? Wake up in the morning,  
22 weather lady tells you 60 percent chance of snow.  
23 Headed home, dark outside, cloudy. Do you live in  
24 Alamogordo? Las Cruces?

25 MR. McNAIR: I live in Las Cruces.

1 MR. BECK: Okay. Las Cruces. Headed  
2 home. You get home to Las Cruces, dark outside,  
3 cloudy, the wind is blowing. It's cold. You go  
4 inside in and now the weatherman says 80 percent  
5 chance of snow overnight. And you wake up the next  
6 morning and it's a winter wonderland, which means  
7 you see a dusting of snow on the rocks; right? Not  
8 on the street, not on the sidewalk.

9 So your friend from Mississippi calls  
10 again. She says, "Mr. McNair, what was the weather  
11 like last night?" What are you going to say?

12 MR. McNAIR: "My God, it snowed last  
13 night. I'm surprised."

14 MR. BECK: Right. It snowed last night.

15 MR. McNAIR: It snowed.

16 MR. BECK: How do you know that?

17 MR. McNAIR: You're going to have to  
18 change my mind, because it just melted.

19 MR. BECK: That's right. How do you know  
20 it snowed overnight? You didn't see it snowing, did  
21 you?

22 MR. McNAIR: But I know it snowed because  
23 I'm looking out the window.

24 MR. BECK: So you woke up the next  
25 morning, you found snow, you know it snowed

1 overnight. Do you understand that that's  
2 circumstantial evidence? Don't get me wrong.  
3 There's direct evidence that there is snow on the  
4 ground, but circumstantial evidence that it snowed,  
5 because you didn't experience it. You didn't see  
6 it.

7 MR. McNAIR: Didn't see it snow. Didn't  
8 touch it. See it on the ground, a little dusty.

9 MR. BECK: Now, the judge is going to  
10 instruct you in this case that those are to be  
11 treated the same. Direct evidence, circumstantial  
12 evidence. You'll use both to come to your  
13 determination at the end of this case.

14 Is there anyone in here who can't follow  
15 that instruction and treat the direct evidence of  
16 snow, or whatever we're trying to prove in here, the  
17 same as the circumstantial evidence, if the judge  
18 instructs you that you're to do that?

19 All right. Thank you.

20 All right. Let's move over here to --  
21 let's do Ms. Ortiz over here.

22 Ms. Ortiz, have you ever heard of CSI?

23 MS. ORTIZ: Yes.

24 MR. BECK: Has everyone heard of CSI,  
25 NCIS, those types of episodes? I learned just last

1 week that CSI plays 116 times in one week in  
2 Albuquerque. So in those shows, right, we see they  
3 have an hour or two to solve a crime. And they go  
4 to the crime scene, they get the evidence, and they  
5 pick up the evidence and some universal particle  
6 tells them it was Colonel Mustard in the library  
7 with the candlestick. Is that how those stories  
8 work, Ms. Ortiz?

9 MS. ORTIZ: Yep.

10 MR. BECK: Okay. Does anyone think that  
11 that's an accurate portrayal of solving crime in  
12 real life? Raise your hand. And I'm not saying  
13 somewhat accurate, but that we solve crime in two  
14 hours by some universe particle that tells us it was  
15 Colonel Mustard in the library with the candlestick.  
16 Raise your hand if you'll be disappointed if that's  
17 not exactly how this trial goes over the next six to  
18 eight weeks. I'm not going to call on you. You can  
19 raise your hand. I'm just saying.

20 Ms. Ortiz, do you have any kids?

21 MS. ORTIZ: No.

22 MR. BECK: Well, I do. I also grew up  
23 with brothers and sisters, and I remember when I was  
24 a young kid, my mom was having a baby shower for her  
25 friend. And I'm the older brother. I've got a

1 younger brother, an older sister, and a younger  
2 sister. And there were cupcakes for this baby  
3 shower. And anyone can tell you I've got a sweet  
4 tooth. Okay? We all do. We get it from our  
5 parents.

6 So at this baby shower with the cupcakes,  
7 all the kids were there. The cupcakes went missing;  
8 right? Now, later on my mom asks us, "What happened  
9 to all the cupcakes? Did you eat any cupcakes?"

10 And I said no, of course. I still  
11 maintain that. But of course my older sister and my  
12 younger brother and my younger sister all admitted,  
13 "Yes, Mom, we ate the cupcakes." And my younger  
14 sister, because she was two at the time, said, "Matt  
15 ate them, too." Great. My mom finds a cupcake  
16 wrapper in my room. I maintain my story, though.

17 Well, she asked my older sister and my  
18 younger brother, "Did Matt eat cupcakes?"

19 And they're truthful, so they said yes.

20 Ms. Ortiz, did I eat a cupcake?

21 MS. ORTIZ: I don't know.

22 MR. BECK: Okay. Well, you may be here  
23 for six to eight weeks, too.

24 Is it worth my mom's time and my mom's  
25 resources to go and get fingerprint evidence on that

1 cupcake wrapper she found?

2 MS. ORTIZ: No.

3 MR. BECK: Is it worth her time to take it  
4 to the lab and get DNA testing for my hair on that  
5 cupcake wrapper?

6 MS. ORTIZ: No.

7 MR. BECK: Thank you, Ms. Ortiz.

8 Is there anyone who disagrees that the  
9 cupcake wrapper in my room, all my traitor sisters  
10 and brother saying that I ate a cupcake, and my  
11 sweet tooth -- is there anyone who disagrees with  
12 Ms. Ortiz that we should have gotten fingerprint and  
13 DNA evidence on that cupcake wrapper? Thank you.

14 The last thing I want to ask of y'all is,  
15 one more time, is there anyone who throughout this  
16 portion of my questioning -- thank y'all for  
17 indulging me -- is there anyone who throughout this  
18 time has developed some reservation or some thought  
19 that may keep them from being a fair and impartial  
20 juror on this case that we haven't already  
21 discussed? Anyone want to raise their hands? Thank  
22 y'all.

23 THE COURT: All right. Thank you, Mr.  
24 Beck.

25 All right, Ms. Duncan, Mr. Lowry, do you



1 have additional direct voir dire examination you  
2 wish to conduct?

3 MS. DUNCAN: We do, Your Honor.

4 THE COURT: Ms. Duncan.

5 MS. DUNCAN: Thank you. Good morning,  
6 everyone. I know we introduced you to our team  
7 yesterday, but I'd like to reintroduce you. This is  
8 Marc Lowry, my co-counsel from Albuquerque. Aaron  
9 Glassner, our paralegal, and right here is Anthony  
10 Ray Baca, our client, who we'll be representing  
11 here.

12 I'm going to ask you some questions about  
13 specific opinions you have about issues that we  
14 think are relevant to this case. And I know we've  
15 talked a lot so far, but I just want to follow up on  
16 some. I want to talk first as to the importance of  
17 expressing your opinions in voir dire. And you all  
18 have shown up now for two days in jury selection, so  
19 you clearly take your civic duty very, very  
20 seriously and everyone in this room really  
21 appreciates it. We know for all of you who have sat  
22 on the benches for a few days, we know how hard and  
23 uncomfortable they are. So I appreciate it that  
24 despite the fact that you sat on them for eight  
25 hours yesterday, you came back for another round

1 today.

2 Mr. Beck will talk to you about prejudice  
3 against bow ties and man buns, you know, and those  
4 things that we like or dislike that are somewhat  
5 easy to put away, those kinds of biases we may have.  
6 But then Ms. Yatsattie talked about her work with  
7 kids and trying to keep them out of gangs and how  
8 her experience of working with children that way may  
9 mean that she has a bias when she hears someone is a  
10 member of a gang or has recruited someone to a gang,  
11 and she may not be an impartial person to consider  
12 whether or not that particular person has committed  
13 a crime.

14 So there are different kinds of biases.  
15 And what we're just trying to understand here is,  
16 based on your life experiences, on your opinions,  
17 can you be a fair and impartial juror in this  
18 particular case? And the opinions that you hold  
19 there, they're your opinions. Judge Browning told  
20 you that yesterday. There is nothing wrong with  
21 that. We're not trying to talk you out of your  
22 opinions.

23 But ultimately our jury system only works  
24 if each us are honest with ourselves about how we  
25 feel about things, what we believe, and then ask

1 ourselves, would my beliefs get in the way of me  
2 being fair and impartial in this case, of looking at  
3 the evidence on a clean slate, and giving both sides  
4 the benefit of that doubt? So when we ask you these  
5 questions, really that's just what we're trying to  
6 understand, is: Can you do that for Mr. Baca? So  
7 I'm here to ask on behalf of Mr. Baca.

8           You know, I would like to go back to this  
9 idea of gang membership. As Judge Browning told  
10 you, the Government has accused Mr. Baca of being a  
11 member of the Sindicato de Nuevo Mexico, also known  
12 as SNM. So my question is: Does anyone think that  
13 if he is a member of a gang, that it is likely that  
14 he committed an offense or committed one of the  
15 offenses that he has been charged with in this case?  
16 Does anyone hold that opinion? And we asked you  
17 about that issue in the questionnaire. And the  
18 question was -- did someone raise their hands? I'm  
19 sorry, Ms. Yatsattie. I didn't see you.

20           MS. YATSATTIE: It's going back to my  
21 further answers to the question before, so...

22           MS. DUNCAN: I appreciate that. Other  
23 than Ms. Yatsattie, does anyone -- if they find that  
24 someone is a member -- Ms. Taylor. Could you pass  
25 that down to Ms. Taylor, please?

1 MS. TAYLOR: I think a lot of it depends  
2 on the gang. I mean, it's not that I've been a  
3 member of a gang. I had a brother, like I said, who  
4 was in a gang, but I was gone from home. But I  
5 think we hear so much about different gangs. I know  
6 people that are in motorcycle gangs, and you hear  
7 what the history of that motorcycle gang is and what  
8 they do.

9 I don't know anything about this gang, but  
10 I think it's hard not to think about if this is a  
11 known gang that does this kind of stuff. Then it's  
12 hard not to think about the pressure of being in a  
13 gang, and if you're in the gang, what are your  
14 responsibilities? What is it that that gang does?  
15 So I mean, I can't say I wouldn't think about that.

16 MS. DUNCAN: I appreciate that,  
17 Ms. Taylor.

18 MS. TAYLOR: Because it's the structure of  
19 the gang, that you do what the gang says you're  
20 supposed to do.

21 MS. DUNCAN: So I just want to understand  
22 what you're saying. So in this case, the allegation  
23 is a prison gang. So is the fact that someone is a  
24 member of a prison gang -- would that make you tend  
25 to think that that person would be guilty of a

1 crime?

2 MS. TAYLOR: I think given the evidence  
3 that the State gives would help set up the structure  
4 of that gang. And I would believe what they say.  
5 Now, if they can't, you know, present things that  
6 these kind of things happened in the gangs, then I  
7 guess I wouldn't believe it. But it's hard not to  
8 think about it, with your understanding of how gangs  
9 are set up.

10 MS. DUNCAN: And I think I understand what  
11 you're saying. So the fact that someone is a member  
12 of a gang -- you would want to know the structure  
13 from how the gang functioned?

14 MS. TAYLOR: Right.

15 MS DUNCAN: Based on sort of the  
16 structure, how the gang functions, could you find,  
17 just based on that, that someone -- would you feel  
18 that someone was guilty of a crime?

19 MS. TAYLOR: I just think it's more  
20 complex than that. Because I think there are  
21 different structures for different gangs, and  
22 there's different history that goes with different  
23 gangs. And this gang is the Boy Scouts or the Girl  
24 Scouts; they sell cookies. But this gang has a  
25 history of committing murders, or whatever they do.

1 So, yes, I'm going to listen to the evidence and go  
2 from that, but I just want to be honest that that's  
3 in the back of your head about what kind of gang it  
4 is.

5 MS. DUNCAN: And I appreciate that. Thank  
6 you for answering my question.

7 MS. TAYLOR: I hope I did.

8 MS. SMITH: I agree with her. It depends  
9 on the gang, what kind of gang that you're in. Most  
10 gangs that I know initiate people to do certain  
11 things. I don't mean that they can't change once  
12 they get in that gang and they do something wrong.

13 But I seem to agree with her. It's the structure of  
14 the gang that you're in, because there's Christian  
15 gangs and then there's ones that initiate violence.

16 MS. DUNCAN: So if you were to learn that  
17 someone was a member of a prison gang and that was  
18 all that you knew about that person, would you think  
19 it was more likely that they had committed a  
20 criminal offense while in prison?

21 MS. SMITH: Yes, ma'am, I do.

22 MS. DUNCAN: And that would be without any  
23 other evidence presented to you about that  
24 particular person?

25 MS. SMITH: They're more likely to do it

1 when -- if they're in a prison gang. So I would go  
2 by the evidence, but they're more likely to do a  
3 crime.

4 MS. DUNCAN: So you would feel -- if  
5 you've heard the evidence that someone was a member  
6 of a prison gang, you'd presume that that person had  
7 committed an offense?

8 MS. TAYLOR: I just want to say that there  
9 would be more opportunity for them to commit. I  
10 just want to clarify that I think there is more  
11 opportunity to commit a crime; not that they've  
12 committed the crime just because they're in the  
13 gang, but more opportunity, depending on the gang.

14 MS. DUNCAN: Yes. Ms. Smith, do you agree  
15 with that? Do you agree with her?

16 MS. SMITH: Yes, ma'am. I agree with her  
17 the same, that there is more opportunity if you're  
18 in a gang like that to commit a crime.

19 MS. DUNCAN: Okay. So I think I  
20 understand what you're saying. Does anyone agree  
21 with Ms. Taylor and Ms. Smith?

22 MR. BRIMMER: I mean, yeah, there's  
23 obviously more opportunity. Just statistically, it  
24 seems like it would be more likely, but that doesn't  
25 necessarily mean that they did do a crime. I'm

1 former military, which means it's more likely that  
2 I've been to Iraq and Afghanistan, but six years and  
3 I didn't.

4 MS. DUNCAN: If you were to hear evidence  
5 that someone was a member of a prison gang, would  
6 that tend to make you think that that person is  
7 guilty of a crime or was more likely to commit a  
8 crime than another person?

9 MR. BRIMMER: On the initial, you know,  
10 meeting, hey, this guy is Joe, and he's a member of  
11 gang X, and this gang is known for this, yeah,  
12 that's going to kind of color a little bit of some  
13 of the perceptions initially. But I would like to  
14 think that I'm a rational enough person that,  
15 presented with enough evidence that they did not, or  
16 they are not, you know, violent members of whatever  
17 gang, you know, that ideas can change. But yeah,  
18 that definitely has a chance of coloring perceptions  
19 initially.

20 MS. DUNCAN: Thank you, Mr. Brimmer.

21 Anyone else? Thank you. Ms. Tighe?

22 MS. TIGHE: Yes, I do agree that knowing  
23 that someone was part of a prison gang, that it  
24 would color my perception and, you know, be at least  
25 in the back of my mind and make it maybe more



1 difficult to be impartial.

2 MS. DUNCAN: Thank you. So the fact that  
3 they -- that you heard evidence that they were a  
4 member of a prison gang would make it more difficult  
5 for you to consider the evidence fairly between the  
6 Government and the defense; is that correct?

7 MS. TIGHE: Yes.

8 MS. DUNCAN: Thank you, Ms. Tighe.

9 Does anyone else have thoughts about  
10 membership in a gang and the impact that might have  
11 on the evaluation of the evidence?

12 Okay. Thank you all for your answers.

13 I'd like to follow -- sorry. I'm losing  
14 paper here. As you heard from Judge Browning, Mr.  
15 Baca is charged with three conspiracies to commit  
16 murder and a conspiracy to commit aggravated  
17 assault. Does the fact that he's charged with four  
18 violent crimes cause anyone to think that he must be  
19 guilty of at least one of them? Does anyone have  
20 any concerns about the number of charges against Mr.  
21 Baca at this point and their ability to consider the  
22 evidence against him? I'm seeing no hands.

23 Can everyone here commit to me that as  
24 they hear this evidence, that they will consider  
25 individually each of the charges against Mr. Baca

1 and that they will hold the Government to its burden  
2 of proof as to each charge against Mr. Baca? Is  
3 there anyone who can't make that promise to me?

4 The Government I also expect to introduce  
5 some evidence or may introduce some evidence of bad  
6 acts by Mr. Baca that he allegedly committed that  
7 are not charged crimes in this case. If you were to  
8 find that the Government proved beyond a reasonable  
9 doubt a bad act that is not charged but thought the  
10 Government had not met its burden of proof beyond a  
11 reasonable doubt for the charged offense, would any  
12 of you have difficulty finding him not guilty of the  
13 charged crimes in this case? Would the fact that  
14 you heard evidence of uncharged conduct weigh on  
15 anyone's mind in considering the evidence?

16 Mr. Brimmer.

17 MR. BRIMMER: Yeah, that obviously weighs  
18 on our minds. Yeah, we're here to weigh guilt or  
19 innocence for one crime. But if we come across  
20 something of another, I mean, that obviously --  
21 well, well, there's something up here. Maybe not  
22 this specific charge, but, you know, something is.  
23 You got to keep in mind, a guy like Al Capone got  
24 taken down for tax evasion, not what he actually  
25 did.

1 MS. DUNCAN: So would evidence of other  
2 acts besides what Mr. Baca is charged with weigh on  
3 you in deciding whether or not he was not guilty or  
4 guilty of the charged offenses?

5 MR. BRIMMER: I think it would definitely  
6 probably play into it, yeah.

7 MS. DUNCAN: Thank you for your answer.  
8 Yes, Ms. Tighe?

9 MS. TIGHE: I think it would just go to  
10 show a pattern of behavior. Even though it's not a  
11 charged crime, I think it just shows a pattern of  
12 behaviors.

13 MS. DUNCAN: And would hearing that sort  
14 of evidence cause you to be less impartial towards  
15 Mr. Baca as a juror?

16 MS. TIGHE: Probably.

17 MS. DUNCAN: Thank you, Ms. Tighe.

18 Does anyone else feel like Ms. Tighe or  
19 Mr. Brimmer? Two people in the front row.

20 I think you are Ms. Hournbuckle; is that  
21 correct?

22 MS. HOURNBUCKLE: That's correct. I agree  
23 about the pattern of behavior, that that would cause  
24 me to have some concerns and questions and feelings  
25 of doubt. And although I would try to be as open to

1 all of the evidence as I possibly could, I'm afraid  
2 that would kind of bear down on me, just because of  
3 things that I know have happened with gangs, and  
4 that type of behavior, and the pressures that go  
5 with those types of organizations. I think that  
6 might be a problem. I don't know that it would keep  
7 me from being objective, but I know it would be in  
8 the back of my mind.

9 MS. DUNCAN: Is it something that would be  
10 hard to put out of your mind as you consider the  
11 evidence?

12 MS. HOURNBUCKLE: It's hard to say. I  
13 would try to be as objective as possible and weigh  
14 the evidence and be fair, because I know of  
15 injustice in the legal system, and I feel really bad  
16 for people who have been unjustly charged and  
17 committed for things that they didn't do. So I want  
18 to be fair in the decisions that I reach based on  
19 the evidence. But it's just that it would be in the  
20 back of my mind.

21 MS. DUNCAN: I understand. I appreciate  
22 your commitment to being fair and impartial, and I  
23 hear you saying it's something that could be  
24 weighing in the back of your mind as you considered  
25 the evidence and that causes you concern; is that

1 fair?

2 MS. HOURNBUCKLE: Yes, yes.

3 MS. DUNCAN: Thank you, Ms. Hournbuckle.

4 Mr. McNair?

5 MR. McNAIR: I somewhat disagree, because  
6 if the charge is a pattern of behavior, I don't know  
7 if he did his time for that already or not. So  
8 those charges are not being presented. They're just  
9 being presented as an example. That shouldn't sway  
10 me one way or the other as to why he's here now.  
11 You gave me four charges, but there was nothing from  
12 the other side that said that he did this 10 years  
13 ago or whatever the case may be. And unless you're  
14 trying him on, what, 404(b) 402(b), that he's got  
15 pattern behavior, then that's a different story.  
16 But I'm not hearing 402(b) being charged.

17 MS. DUNCAN: So I think hear you saying  
18 that if you were to hear evidence that wasn't being  
19 charged, that hadn't been -- uncharged conduct, that  
20 you would be able to put that aside and consider --

21 MR. McNAIR: That could have been charged  
22 or dropped or anything. There's no evidence of it.  
23 It's not being charged now.

24 MS. DUNCAN: Thank you, Mr. McNair.

25 MR. McNAIR: Thank you.

1 MS. DUNCAN: I'd like to ask for people  
2 who are in the jury box what are your thoughts  
3 about -- would you be able -- if you were to hear  
4 evidence of uncharged conduct by Mr. Baca, would  
5 that affect in any way your ability to consider --  
6 to limit your consideration to the charges, the four  
7 charges against him in this case? Does anyone have  
8 any concerns about that?

9 Ms. McNair (sic), do you have any concerns  
10 about your ability to separate those?

11 THE CLERK: Mr. McNair is in the back.

12 MS. DUNCAN: I'm sorry. Am I saying your  
13 name wrong? I am. I'm sorry. I'll get my chart.  
14 I apologize. All right. Ms. Decramer. I'm sorry.  
15 Ms. Decramer.

16 MS. DECRAMER: You asked about the same  
17 question?

18 MS. DUNCAN: I did.

19 MS. DECRAMER: As far as the charges that  
20 are brought against them, I don't have a problem  
21 making a decision on that. But as the others have  
22 said, too, I feel the pattern of behavior -- if this  
23 person has been charged with that same type of crime  
24 in the past, yeah, I'm going to have a problem  
25 trying to keep that one aside, because the pattern

1 of behavior is showing itself again. It would be  
2 difficult.

3 MS. DUNCAN: So that's something that  
4 would weigh on your mind as you consider just the  
5 evidence about whether a person was not guilty or  
6 guilty of just the charges against them; is that  
7 correct?

8 MS. DECRAMER: Right, because in the back  
9 of my mind it would be, well, if they had done this  
10 thing in the past, what makes it any different now?

11 MS. DUNCAN: Thank you. I appreciate  
12 that.

13 And how about Ms. Cator? What do you  
14 think about that?

15 MS. CATOR: I think everybody has the  
16 opportunity to change. And just because I continue  
17 to do something through high school doesn't mean I  
18 continued to do that as an adult. So I do not make  
19 the same assumption.

20 MS. DUNCAN: And what about the question I  
21 asked earlier about membership in a gang and whether  
22 that is something that would weigh on your mind in  
23 considering whether someone was not guilty or guilty  
24 of an offense? Is that something that would tip the  
25 scale in favor of the prosecution for you?

1 MS. CATOR: No.

2 MS. DUNCAN: Thank you.

3 THE COURT: Ms. Duncan, would this be a  
4 good time for us to take our morning break?

5 MS. DUNCAN: It would, Your Honor.

6 THE COURT: I'm not going to repeat the  
7 instructions, but do keep them in mind. Don't talk  
8 to anybody about the case. Don't do any research  
9 for purposes of this case. Talk about something  
10 else.

11 All right. We'll be in recess for about  
12 15 minutes. All rise.

13 (The venire panel left the courtroom.)

14 THE COURT: All right. We have a United  
15 States Marshal. I don't know if Sergio is in the  
16 room. But Sergio Hermosillo, his -- I'm not sure I  
17 quite understand the connection. It's his  
18 girlfriend's sister that knows juror number 2, Ms.  
19 Benavidez. They have been to parties together. I  
20 don't think they've particularly socialized, but we  
21 can find this out. But they did recognize each  
22 other. He did not -- the marshal did not think  
23 that -- deputy marshal did not think that she knew  
24 what his job was, but he's in a suit here, so I'll  
25 let y'all decide what to do with that.



1 Ms. Winston did show up. I don't think  
2 she got here for my sort of final general questions,  
3 but she did get to hear the individual questions  
4 that I asked. She got here at 9:55, which I think  
5 was right -- I think Mr. Beck was still questioning  
6 when she came in, so she missed most of the  
7 Government's, but I think she's heard everything  
8 that Ms. Duncan has done, if I understand where the  
9 break occurred.

10 All right. We'll be in recess for about  
11 15 minutes.

12 (The Court stood in recess.)

13 (The venire panel entered the  
14 courtroom.)

15 THE COURT: All right. Ms. Duncan, if you  
16 wish to continue your additional direct voir dire  
17 examination.

18 MS. DUNCAN: Thank you, Your Honor.

19 THE COURT: Ms. Duncan.

20 MS. DUNCAN: Before the break, we were  
21 just talking about if you hear evidence that someone  
22 has done other bad acts but it's not the acts for  
23 which they're on trial, how do you -- how does  
24 evidence of those other acts weigh on your  
25 decision-making for the offenses that are actually  
at issue? And I was thinking about it over the

1 break, and I was thinking just a couple of weeks ago  
2 I got pulled over for speeding, and I didn't do it.  
3 I wasn't speeding. There was a car passing me at  
4 the same time, and it was the other car. But to be  
5 honest with all of you, I have sped in the past. I  
6 have some speeding tickets. And so the question is:  
7 Should I be found guilty of this speeding at this  
8 time that I've been charged based on the other times  
9 that I had sped? Does anyone think that I should  
10 be?

11 Has anyone here ever gotten a speeding  
12 ticket? It's like everybody. Has anyone ever --  
13 who has gotten a speeding ticket before that they  
14 thought they totally deserved been pulled over for  
15 something that they thought they didn't deserve; it  
16 was wrong?

17 I see quite a few hands. Okay, I'll start  
18 with you, Mr. Besson; is that right?

19 MR. BESSON: Yes.

20 MS. DUNCAN: Tell us about that.

21 MR. BESSON: I was pulled over for  
22 speeding one time when I passed a state policeman,  
23 but according to my speedometer I was doing the  
24 speed limit.

25 MS. DUNCAN: And do you think that the

1 fact that you -- you indicated, I think, that you  
2 got a ticket before you thought you might have  
3 deserved?

4 MR. BESSON: Sure.

5 MS. DUNCAN: So you think you should have  
6 been found guilty of that one based on the earlier  
7 speeding?

8 MR. BESSON: No.

9 MS. DUNCAN: Anyone else?

10 I also wanted to talk to you a little bit  
11 about this conspiracy idea. Mr. Beck had this  
12 hypothetical about the bank robbery with Ms. May,  
13 Ms. Taylor, and Ms. Smith and himself. And that was  
14 sort of the insider view of a bank robbery, which,  
15 of course, none of you as jurors have; you weren't  
16 there.

17 Let's say, Ms. May, I think you were the  
18 bank robber. So let's say that Ms. May goes into  
19 the bank, she's caught on a surveillance camera  
20 robbing that bank. Based on the surveillance  
21 camera, the police identify her, they arrest her,  
22 they bring her in. They say, "Ms. May, we've caught  
23 you redhanded, you're on video, you're going down  
24 for bank robbery. But you know what? You might get  
25 a break if you just tell us who your accomplices

1 are."

2 So Ms. May, I think, says, "Okay. I don't  
3 want to go to prison for a long time. I'm going to  
4 tell everyone who my accomplices are."

5 So in addition to saying Ms. Taylor and  
6 Ms. Smith, she also says, "Ms. Whitehead was one of  
7 my accomplices, and also Ms. Hournbuckle."

8 Now, you all know from that insider view  
9 that Ms. Whitehead and Ms. Hournbuckle had nothing  
10 do with it, but Ms. May has figured out that she  
11 might get a better deal the more people that she  
12 names.

13 So now you're jurors. You're being asked  
14 to decide whether Ms. Hournbuckle and Ms. Whitehead  
15 are guilty of robbery. How do you evaluate  
16 Ms. May's testimony? How do you know if she's  
17 telling the truth? Does anybody have any idea of  
18 how we tell?

19 MS. WOLFE: Based on the evidence that the  
20 prosecution provides us.

21 MS. DUNCAN: So when you said "based on  
22 the evidence the prosecution provides," what kind of  
23 evidence would you want to see?

24 MS. WOLFE: I'd like to see who else was  
25 on that video.

1 MS. DUNCAN: Thank you. Is there any  
2 other evidence other than who else is on that video?

3 MS. WOLFE: That's the only evidence I'd  
4 have at this time.

5 THE COURT: Ms. Duncan, can you try to get  
6 the names of the jurors?

7 MS. DUNCAN: I apologize.

8 MS. WOLFE: I'm Ms. Wolfe.

9 MS. DUNCAN: Thank you, Ms. Wolfe.

10 Anyone else? How do you evaluate the  
11 credibility of someone who is pointing fingers?  
12 Let's assume she's pointing fingers at Ms. Whitehead  
13 and Ms. Hournbuckle. They weren't on the  
14 surveillance video. They were in Las Vegas or in  
15 Reno at the time. How do you evaluate that  
16 testimony? What kind of evidence do you want to  
17 see? Are you Ms. Minton?

18 MS. MINTON: We'd want to listen closely  
19 to her testimony as well as the testimony of Ms.  
20 Hournbuckle and Ms. Whitehead. We'd need to decide  
21 for ourselves who is telling the truth and who is --  
22 you know, what facts you were providing to us.

23 MS. DUNCAN: Thank you. And what if you  
24 don't hear? So what if you don't hear from Ms.  
25 Hournbuckle or Ms. Whitehead? How do you decide?

1 MS. MINTON: By listening closely to the  
2 testimony and then just looking for consistencies or  
3 inconsistencies in the testimony, kind of analyzing  
4 what we've heard.

5 MS. DUNCAN: Thank you.

6 Anyone else? I thought I saw another hand  
7 over here. Mr. Houghtalin?

8 MR. HOUGHTALIN: Maybe if you were out of  
9 town -- if I would say I was out of town, and I'd be  
10 in a building where there's cameras, that would be,  
11 like, I'm here, this is my crew, other people that  
12 are around me, I'm pretty sure I wouldn't go on a  
13 trip to Vegas just by myself, that would be a  
14 witness, a receipt for a motel room that puts the  
15 time. I mean, there's a lot of motives. You could  
16 subpoena people to come to court to testify if they  
17 agree to come, too, and not...

18 MS. DUNCAN: Thank you, Mr. Houghtalin.  
19 So in that circumstance, would you expect the people  
20 on trial, the defendants, to put on evidence to  
21 prove their defense?

22 MR. HOUGHTALIN: Yes, ma'am.

23 MS. DUNCAN: And if they didn't do that,  
24 if they didn't put on any evidence, would you hold  
25 that against them?

1 MR. HOUGHTALIN: No. You'd have to hear  
2 both sides of the story, because they're innocent;  
3 you're automatically innocent until you're proven  
4 guilty. And just like the Liberty Lady, she's  
5 blindfolded and the scale is tilted a little bit  
6 weighing more one way to the other. And that's when  
7 the jury comes in. That's when we hear all the  
8 testimony, and we hear both sides, the prosecutor's  
9 and the defenders', and the cases, because, like  
10 they're saying prior, people do change. I did grow  
11 up a fast life. But I've been 15 years -- stayed  
12 out of trouble, made choices in life to stay away  
13 from, you know? I have my own conscience and my own  
14 decisions. So it's kind of being rude or -- I don't  
15 know the word for it, but assuming right away that  
16 that person is guilty, that just makes me calling  
17 the kettle black.

18 MS. DUNCAN: Thank you, Mr. Houghtalin.  
19 I'll ask you another question, then I'll stop  
20 picking on you. So in a circumstance like that,  
21 where the defense doesn't put on any evidence, so  
22 you're just hearing from the prosecution, how would  
23 you evaluate the testimony of someone who is saying,  
24 "Yeah, I did it, but here are all the other people  
25 who did it"?

1 MR. HOUGHTALIN: I could only speak for  
2 myself, because I'm the type of person, if I did the  
3 crime or I was in the vicinity and I knew something  
4 about it, I'm the type of person that would own up  
5 to it. I would take full responsibility like I've  
6 learned throughout my life. Like I said, the state,  
7 the federal, they have to prove, they have to  
8 make -- they have to make it all truth. But  
9 there's, like, there's always going to be  
10 differences, inconsistencies back and forth, or are  
11 you telling the truth or trying to throw a curve  
12 ball and see if that person is lying, or are they  
13 sticking to the same story where they're honest?

14 MS. DUNCAN: Thank you. I think I heard  
15 you saying you would just want to hear all that  
16 evidence and consider it, make a decision on that;  
17 is that correct?

18 MR. HOUGHTALIN: Yes, my experience is,  
19 like, I have tattoos on my neck and right away  
20 people look away or are shy. I'm already being  
21 judged right then and there. I know that. But they  
22 don't know I'd rather have somebody stop me and ask  
23 me, "What does that say on your neck, or what does  
24 it mean?" Like I have the praying hands, religious  
25 stuff. My mother's name. My grandmother's name. I



1 have scars with my children's names. They're just  
2 walking by me and I can see the other person walking  
3 to the left or they put their head down. It kind of  
4 puts a little burden on your head, but you've got to  
5 get past that.

6 MS. DUNCAN: I appreciate you sharing that  
7 with us. I think that's a really good example of  
8 the ways in which we can't just jump to assumptions  
9 about people and really do need to ask those kinds  
10 of questions and hear the evidence. So thank you  
11 for that.

12 MR. HOUGHTALIN: Okay.

13 MS. DUNCAN: Does anyone else have some  
14 thoughts on this, how you evaluate the truthfulness  
15 of a witness? Yes, you are Mr. Laroche?

16 MR. LAROCHE: I guess I'd ask that there  
17 be some sort of, like, corroborating evidence, as  
18 well. Was she on the phone with them right before  
19 she robbed the bank? Did they talk on the phone all  
20 the time? Do they seem to actually know the other  
21 people involved in the conspiracy? Do the other  
22 people, if there are other people that are making a  
23 plea agreement -- do they also name the two women  
24 who were on that bench? There would have to be  
25 something besides like just the testimony that

1 suggested beyond a reasonable doubt that they were  
2 involved to convict them.

3 MS. DUNCAN: Thank you, Mr. Laroche.

4 Does anyone else have any thoughts?  
5 Anyone over in the jury box? I'm sorry I turned my  
6 back to you.

7 Yes. Ms. Hournbuckle.

8 MS. HOURNBUCKLE: I have a question. Can  
9 we base any thoughts or feelings on their body  
10 language, and maybe if they -- I know it's an  
11 anxious time when someone is in the witness seat.  
12 But body language says a lot of things and we could  
13 misinterpret that. But when you're trying to  
14 determine whether or not someone is telling a truth  
15 or a lie, is that something that is useful to us as  
16 jurors? I'm just asking because I've grown to  
17 distrust so many people. And this year I'm trying  
18 to get back my trust. But there's just so many lies  
19 in the world, and I tend to take people at their  
20 face value and been fooled. So I'm just curious how  
21 we handle our perception of how they present  
22 themselves.

23 MS. DUNCAN: Thank you, Ms. Hournbuckle.  
24 That's a good question.

25 Judge Browning will instruct the jury on

1 how you evaluate the testimony of a witness, and  
2 ultimately it's up to each juror to determine  
3 whether they believe this witness is being credible  
4 or truthful or not. That's the best I can give to  
5 you, that I think it's ultimately the jury's  
6 responsibility, but Judge Browning will provide  
7 instructions to everyone on how to do that. Thank  
8 you.

9           Anyone else? I don't see any hands.

10           My last question. I just want to follow  
11 up with some of you who raised some issues about  
12 hardship, so serving on this trial for six to eight  
13 weeks. I know it's going to be hard for everyone  
14 who serves. It's a long time and we appreciate  
15 that.

16           Ms. Benavidez, I understand you have a  
17 one-year-old son; is that correct?

18           MS. BENAVIDEZ: Correct.

19           MS. DUNCAN: And that you would have some  
20 child care issues if you were for serve on a  
21 six-to-eight-week jury?

22           MS. BENAVIDEZ: Yes.

23           MS. DUNCAN: Can you tell us a little bit  
24 about that, more about that?

25           MS. BENAVIDEZ: My spouse takes him to the

1 caregiver in the morning and I pick him up in the  
2 afternoon for a split shift. In order for us to do  
3 that, I go in earlier, she gets off earlier --  
4 later.

5 MS. DUNCAN: And so if you were here in  
6 Las Cruces for six to eight weeks, would that be a  
7 hardship on you and your spouse?

8 MS. BENAVIDEZ: Correct. Yeah. She would  
9 have to get permission to alter her hours, and also  
10 for the caregiver, too, taking care of him for a  
11 longer period of time.

12 MS. DUNCAN: Then you also had mentioned  
13 that you have a trip, a work trip, from February 4th  
14 to the 10th; is that correct?

15 MS. BENAVIDEZ: Correct.

16 MS. DUNCAN: And I think you said that  
17 someone else could go for you?

18 MS. BENAVIDEZ: It's an audit, and I'm  
19 supposed to lead it. But I mean, obviously, I'm not  
20 the only auditor at my workplace, so they probably  
21 could get somebody else to cover it, but it's  
22 already been paid for, the plane tickets, and it's  
23 nonrefundable.

24 MS. DUNCAN: Okay. But someone else could  
25 cover?

1 MS. BENAVIDEZ: Potentially, yes.

2 MS. DUNCAN: And then other than you and  
3 your spouse, is there someone who can take care of  
4 your one-year-old son?

5 MS. BENAVIDEZ: Her mother takes care of  
6 him, but that's the only person.

7 MS. DUNCAN: And so would her mother be  
8 able to help for a six-to-eight-week trial if you  
9 were here in Las Cruces?

10 MS. BENAVIDEZ: If she had to, yes.

11 MS. DUNCAN: The next person,  
12 Ms. Decramer. I believe you said your husband  
13 suffers from prostate cancer; is that correct?

14 MS. DECRAMER: That's correct.

15 MS. DUNCAN: And you have something  
16 scheduled in two weeks for him?

17 MS. DECRAMER: According to his doctor, in  
18 two weeks' time they're going to determine whether  
19 he needs to go back for a repeat surgery. That's at  
20 the Mayo in Rochester.

21 MS. DUNCAN: So you would be traveling to  
22 Minnesota with him?

23 MS. DECRAMER: Yes.

24 MS. DUNCAN: And do you have dates for  
25 that trip?

1 MS. DECRAMER: No. At the end of two  
2 weeks we should have dates.

3 MS. DUNCAN: And you also said that you  
4 were planning to move to Minnesota; is that right?

5 MS. DECRAMER: Right. We're going to put  
6 our house up for sale and move back, be closer to  
7 our family and closer to the Mayo Clinic.

8 MS. DUNCAN: Is there a time line you're  
9 trying to fit that move into?

10 MS. DECRAMER: The house is going to go on  
11 the market in about two weeks, and when it sells we  
12 go.

13 MS. DUNCAN: So in terms of getting  
14 treatment for your husband and selling your house  
15 and this move, are those things that would weigh on  
16 your mind if you are brought in to serve on a  
17 six-to-eight-week jury trial?

18 MS. DECRAMER: It would, because there is  
19 no way that I can -- he and I can prepare the house  
20 for sale and do all the work of packing and  
21 everything if I'm here five days a week. That's  
22 just -- it would be kind of tough.

23 MS. DUNCAN: So would thinking about those  
24 things and worrying about the appointment in two  
25 weeks and moving to Minnesota -- are those things

1 that might interfere with your ability to pay  
2 attention here in court?

3 MS. DECRAMER: It would be on my mind,  
4 right, as to who is going to do all this.

5 MS. DUNCAN: I understand. Okay. Thank  
6 you. I believe we also had Ms. Garnanez.

7 MS. GARNANEZ: Yes.

8 MS. DUNCAN: I think in your questionnaire  
9 you indicated you were worried about the impact on  
10 your job of serving on a six-to-eight-week jury. Is  
11 that still a concern for you?

12 MS. GARNANEZ: Yes, it is still a concern,  
13 but if I have to be here, I have to be here, so...

14 MS. DUNCAN: So you can make it work?

15 MS. GARNANEZ: Yes.

16 MS. DUNCAN: Great. Thanks.

17 And Ms. Gothard, I think you indicated  
18 that you were taking care of your father who is  
19 sick?

20 MS. GOTHARD: Yeah. My dad has cirrhosis  
21 of the liver, and one of the reasons that I kind of  
22 quit my job was just to be able to be there for him  
23 when he needs me. But he's doing okay. I mean,  
24 he's sick, and he got a cold, you know, and stuff  
25 like that. But I just was thinking of the six to

1 eight weeks, that distance. But I mean, if I have  
2 to be here, I have to be here.

3 MS. DUNCAN: Okay. And so if something  
4 happens with your father, is there someone else who  
5 could take care of him?

6 MS. GOTHARD: Oh, yeah.

7 MS. DUNCAN: Thank you.

8 Let's see. Ms. Huerta? Is that how you  
9 say it? Thank you. You had indicated with your job  
10 that you were the only person doing your job.

11 MS. HUERTA: I'm the only person in the  
12 office. But we have a territory that we cover. So  
13 it's Las Cruces, Deming, Silver City, Hobbs, Clovis,  
14 Portales, Roswell, all in that area. So I'm the  
15 only one that does that job there.

16 MS. DUNCAN: For that whole area?

17 MS. HUERTA: Um-hum.

18 MS. DUNCAN: So if you were chosen as a  
19 juror and were in trial for six to eight weeks,  
20 would that be a hardship on you or on your employer?

21 MS. HUERTA: On both. And because we  
22 don't know -- we don't know what our plan is if I  
23 get chosen, so...

24 MS. DUNCAN: It sounds like there is no  
25 one who could cover you if you were chosen for six



1 to eight weeks.

2 MS. HUERTA: No, because everybody is in a  
3 different office, and I do -- I support them. So --  
4 and my work is daily, and there is nobody else  
5 there, so we never really have to think about who  
6 would do it for that long. So I don't know what  
7 would happen.

8 MS. DUNCAN: Okay. Thank you.

9 And Mr. Gallegos?

10 MR. GALLEGOS: Yes.

11 MS. DUNCAN: I read your letter that you  
12 sent, and I think you said that serving on a  
13 six-to-eight-week jury wouldn't be as much a  
14 hardship on you as it would be on your students.

15 MR. GALLEGOS: Right. Personally, I mean,  
16 I can. But when you're a teacher, it's more work  
17 then to not be there than to actually be there,  
18 because of all the planning and, you know, I have to  
19 be strategic in what I do, and I do teach advanced  
20 placement, and those people paid for the exams at  
21 the end of the year, and it's ultimate -- you know,  
22 it's not being judgmental. It's the students more  
23 than it is me personally.

24 MS. DUNCAN: I think you mentioned there  
25 are some exams coming up?

1 MR. GALLEGOS: Right. So in the state,  
2 it's a busy time in the spring for testing. And it  
3 could harm me professionally because in New Mexico,  
4 teachers are -- 40 percent of our evaluations are  
5 based on tests. If I'm not there, then I can expect  
6 to not have such good results. And I'm also in the  
7 process of advancing my licensure, and that could  
8 potentially harm that.

9 MS. DUNCAN: I think you indicated that  
10 there's paperwork that's due in March for your  
11 licensure; is that correct?

12 MR. GALLEGOS: Yes, so I could advance my  
13 license now in February with the assumption that I  
14 get observed and complete all the evaluation  
15 requirements. I spoke to HR about that. I do have  
16 a -- it's a bigger window. I have until July to get  
17 that done. So like I said, that could be taken care  
18 of at a later time, but it would be difficult to get  
19 evaluated when I should begin that process of  
20 advancing my licensure.

21 MS. DUNCAN: And if you're here in trial,  
22 is there someone else who can cover the AP classes,  
23 or is that just you?

24 MR. GALLEGOS: So with AP classes, you  
25 have to go through training. And I went through

1 that training in 2015, so I'm certified to teach two  
2 different AP courses. The assumption is that there  
3 would be a long-term sub or kind of day-to-day subs,  
4 and they're clearly not certified to teach AP  
5 classes. So I mean, there will be a sub there, but  
6 the students will kind of have to take ownership of  
7 their learning and we'll all pray for the best.

8 MS. DUNCAN: How old are these students?  
9 What grade are they in?

10 MR. GALLEGOS: They're juniors and  
11 seniors.

12 MS. DUNCAN: So for some of them, would  
13 not doing well in the AP -- is the purpose of the AP  
14 to help them get into college?

15 MR. GALLEGOS: Correct.

16 MS. DUNCAN: So is this kind of a critical  
17 time for those students?

18 MR. GALLEGOS: So for the one class in  
19 particular, AP Government is only a semester course.  
20 So I've had this class for a month. So assuming I'm  
21 gone for two months, I'd basically teach them in  
22 April and then they take their test on May 4th or  
23 5th. So every time is critical when you have a  
24 semester to jam a college course into a high school  
25 setting. So I mean, yes, it is critical, and just

1 the assumption that they're paying for these  
2 courses, for the test, with the assumption that they  
3 could potentially earn credit. It's a disservice to  
4 them more than it is to me.

5 MS. DUNCAN: Thank you very much.

6 May I have a moment, Your Honor?

7 THE COURT: You may.

8 MS. DUNCAN: Thank you very much for  
9 answering my questions. I have nothing further,  
10 Your Honor.

11 THE COURT: Thank you, Ms. Duncan.

12 Ms. Bhalla, do you have additional voir  
13 dire examination on behalf of Mr. Herrera?

14 MS. BHALLA: Yes, Your Honor. Thank you.

15 It's almost -- good morning, everyone.  
16 I'm Carey Bhalla. This is our paralegal, Sonia  
17 Salazar; Mr. William Maynard, and our client, Carlos  
18 Herrera.

19 I want to talk to you a little bit more  
20 about Mr. Beck's bank robbery example because I kind  
21 of like it, and I think in this hypothetical we  
22 should give Mr. Beck a man bun, if he doesn't mind.

23 You can use your bow tie.

24 Where is Mr. Gallegos? Okay. You just  
25 got picked on. I'm going to pick on you again. I'm

1     sorry.

2                   MR. GALLEGOS:   All right.

3                   MS. BHALLA:   Mr. Gallegos, you were  
4     sitting here for this bank robbery conspiracy we had  
5     here in court this morning.  You heard Mr. Beck's  
6     plan, you heard from Ms. May and Ms. Taylor and --  
7     is it Ms. Hope?

8                   MS. SMITH:   Smith.

9                   MS. BHALLA:   And Ms. Smith.  And you heard  
10    their conspiracy.  You didn't do anything to stop  
11    the conspiracy.  Are you guilty of the conspiracy?

12                  MR. GALLEGOS:   I would say no.

13                  MS. BHALLA:   Okay.

14                  What about you, Mr. Hassell?  You heard  
15    the conspiracy.  I think Mr. Beck was standing right  
16    here.  Are you guilty of the conspiracy?

17                  MR. HASSELL:   I think I have a duty to  
18    report it, but I don't think I was guilty in part of  
19    conspiracy.

20                  MS. BHALLA:   Okay.  That's fair enough.

21                  Does anybody else think that anyone else  
22    in this courtroom is guilty of a conspiracy because  
23    they didn't do anything to stop the conspiracy that  
24    they heard was going to happen?  Anybody think  
25    that's the way it should be?

1 Can you tell us your name? I'm sorry, I'm  
2 really bad at the list.

3 MR. BRIMMER: Number 32, Brimmer.

4 MS. BHALLA: Mr. Brimmer. Thank you.

5 MR. BRIMMER: So again, drawing on my past  
6 military experience, it's something they drilled  
7 into us a lot with a lot of the various trainings we  
8 had to deal on. Not necessarily a bank robbery  
9 scenario, but assault and things like that. There's  
10 active and passive bystanders. An active bystander  
11 is somebody who actually notices something and takes  
12 action to either stop or prevent; and that if you  
13 are not an active bystander, if you just -- if you  
14 know something, like in this case, they're planning  
15 to commit robbery, and it's found out that you knew  
16 and didn't do anything to stop it, that, you know --  
17 within reason; they don't expect you to jump in a  
18 car and stop you guys from robbing the bank, but at  
19 least as far as the military is concerned, they can  
20 not so much charge you because at this point it's  
21 going back, but they can treat it the exact same as  
22 if you were in on it every step of the way and  
23 helped.

24 MS. BHALLA: And that makes sense, and I  
25 think you can maybe agree with me that the way the

1 military runs might be a little different.

2 MR. HASSELL: Oh, yeah, it's very  
3 different, but it's one of those things that -- it  
4 makes a lot of sense to me, because it does  
5 encourage people to -- you hear something, you say  
6 something.

7 MS. BHALLA: And do you think that that  
8 should apply to our judicial system outside of  
9 military?

10 MR. HASSELL: Probably not as harshly,  
11 because again, even as far as how this operates,  
12 it's very different. The military, in a situation  
13 like -- mostly what we were trained for in that, it  
14 would have been handled by the command structure  
15 which no court, no jury, just -- you're probably  
16 getting kicked out under other than honorable  
17 conditions, you know. So obviously, yes. Probably  
18 not done as harshly as you'll see in the military.  
19 But I mean, I still think that's something that  
20 should be weighed and taken into account.

21 MS. BHALLA: Okay. And I appreciate that.

22 Now I'm going to go to Mr. Fink. I really  
23 want to ask you about the bee hives, but I'm not  
24 going to do that right now. Mr. Fink, now don't get  
25 mad at me. I'm going to put this hypothetical on

1 you. I'm not actually accusing you of being a bank  
2 robber. But for purposes of this hypothetical, I  
3 want us to all assume that you've robbed a lot of  
4 banks, okay? And you're really good at that. And  
5 you know Ms. Taylor, and you may have known she was  
6 up to something; you're not sure. But because you  
7 robbed prior banks and you were involved in prior  
8 bank robberies, does that make you guilty of robbing  
9 this bank in this situation?

10 MR. FINK: No.

11 MS. BHALLA: And does it make you guilty  
12 of conspiracy?

13 MR. FINK: I don't think so.

14 MS. BHALLA: And does anybody else think  
15 that because you have a history of bank robbery,  
16 that that means you're going to be guilty of a bank  
17 robbery that somebody else you're friends with  
18 commits?

19 What about you, Mr. Rodriguez?

20 MR. RODRIGUEZ: To me, substantial  
21 evidence has to be within reason to find guilt.

22 MS. BHALLA: Okay. So just because Mr.  
23 Fink has robbed banks in the past and just because  
24 he's associates with Ms. May and Ms. Taylor, that  
25 doesn't make him guilty of this bank robbery?



1 MR. RODRIGUEZ: Correct.

2 MS. BHALLA: Okay. And if you're going to  
3 hear evidence in trial that Mr. Fink was a bank  
4 robber and Mr. Fink was part of the same group as  
5 Ms. May and Ms. Taylor, are you going to use that  
6 against him? Are you going to think that he was  
7 more likely guilty because he knew them and because  
8 he robbed banks in the past?

9 Let me pick on some other people here.  
10 What about you, Mr. Schoonover? Did I say it right?

11 MR. SCHOONOVER: Yes.

12 MS. BHALLA: What do you think about that,  
13 Mr. Schoonover?

14 MR. SCHOONOVER: It would just be guilt by  
15 association, and that's not right.

16 MS. BHALLA: Okay. So we're all going to  
17 agree that you can't be guilty by association; is  
18 that fair?

19 MR. SCHOONOVER: Yes.

20 MS. BHALLA: And can everybody promise me  
21 that they're okay with that? Yeah? Anybody have a  
22 problem with that. Okay.

23 MR. TAYLOR: I just have a question. Do  
24 they all have equal power?

25 MS. BHALLA: Well, that's a good question.

1 MS. TAYLOR: Because if they all have  
2 equal power in the group -- and then my other  
3 question is: Did -- I can't remember who talked to  
4 me about how he robbed the bank and gave me advice,  
5 or are we just associates and he didn't say  
6 anything?

7 MS. BHALLA: Well, let me see if I can  
8 give you a hypothetical, because I can't talk to you  
9 directly about that, but I can try and use the bank  
10 robbery.

11 MS. TAYLOR: Okay.

12 MS. BHALLA: All right. So you and Mr.  
13 Fink are friends.

14 MS. TAYLOR: Right.

15 MS. BHALLA: And you and Mr. Fink talk,  
16 and you and Mr. Fink have similar friends, and you  
17 know that Mr. Fink is a bank robber. And you never  
18 talk to Mr. Fink about your bank robbery.

19 MS. TAYLOR: Okay.

20 MS. BHALLA: But Mr. Fink probably knew  
21 you were up to no good. Okay? Does that make Mr.  
22 Fink guilty?

23 MS. TAYLOR: It doesn't as long as he  
24 doesn't talk to me about he knows details of what I  
25 was doing and give me advice.

1 MS. BHALLA: So if Mr. Fink gave you  
2 advice, that would make him guilty?

3 MS. TAYLOR: It would make him a  
4 co-conspirator.

5 MS. BHALLA: It would make him a  
6 co-conspirator of the bank robbery?

7 MS. TAYLOR: Right.

8 MS. BHALLA: What if Mr. Fink didn't say  
9 anything? What if you told Mr. Fink your plans and  
10 Mr. Fink sat there and listened and didn't say a  
11 word?

12 MS. TAYLOR: Then he's probably not a  
13 co-conspirator.

14 MS. BHALLA: Then he's not a  
15 co-conspirator. And what if Mr. Fink was the most  
16 popular person in the group and everybody looked up  
17 to him and everybody liked him and everybody  
18 respected him. Does that change anything?

19 MS. TAYLOR: It doesn't, but that's not  
20 the same as having more power and influence over me.

21 MS. BHALLA: Okay.

22 MS. TAYLOR: So I do what he says when he  
23 says it.

24 MS. BHALLA: Okay. Well, let's just  
25 assume Mr. Fink does have more power.

1 MS. TAYLOR: Right.

2 MS. BHALLA: Let's assume that Mr. Fink is  
3 the leader of your bank robbery gang and you tell  
4 your plans to Mr. Fink, and Mr. Fink doesn't say a  
5 word to you.

6 MS. TAYLOR: Then he's not a  
7 co-conspirator.

8 MS. BHALLA: Then he's not a  
9 co-conspirator. Thank you.

10 Yes.

11 MS. APODACA: I disagree.

12 MS. BHALLA: You disagree? Ms. Apodaca,  
13 tell us why you disagree.

14 MS. APODACA: Because I feel that if you  
15 are aware of a crime that's going to be committed --

16 MS. BHALLA: Don't have me fix it.  
17 Somebody else had to turn it on for me, too. Go  
18 ahead.

19 MS. APODACA: Okay. Start me off. What  
20 were we talking about again?

21 MS. BHALLA: I'm going to try to be loud  
22 for Ms. Bean. My husband tells me I'm too loud.  
23 The court reporter tells me I'm not loud enough.

24 We were talking about whether or not Mr.  
25 Fink was in a position of authority, and he knows

1 what Ms. Taylor is up to. Is he guilty?

2 MS. APODACA: Okay. My opinion is: If  
3 there is a power situation or not, if someone is  
4 aware of a crime, they have a duty to say something  
5 to stop it.

6 MS. BHALLA: Okay. Whether or not they're  
7 participating in the conspiracy?

8 MS. APODACA: Whether or not. If you're  
9 aware of it, you need to not let it happen.

10 MS. BHALLA: Okay. And let's take this a  
11 little bit further. Let's say that this conspiracy  
12 was hatched inside a prison, and Mr. Fink is in  
13 prison. What are some reasons Mr. Fink may not want  
14 to take active steps to stop that conspiracy?

15 MS. APODACA: I don't want to speculate.

16 MS. BHALLA: Okay. Can you think of --  
17 can anybody else answer that question? Can anybody  
18 help Ms. Apodaca out?

19 Okay, Mr. Hassell. Mr. Hassell is ready  
20 for an answer.

21 MR. HASSELL: Fear of retaliation for  
22 reporting the incident.

23 MS. BHALLA: Okay. And how do you think  
24 that that would make Mr. Fink look to everybody else  
25 in the prison?

1 MR. HASSELL: Like he ratted somebody out.

2 MS. BHALLA: And do you think that that  
3 would make him look strong?

4 MR. HASSELL: No.

5 MS. BHALLA: Do you think that appearing  
6 strong is something that might be important in a  
7 prison?

8 MR. HASSELL: Probably.

9 MS. BHALLA: Probably? How does everybody  
10 else feel about that?

11 Let's pick on some people in the jury box.  
12 Ms. Benavidez, how do you feel about that? I'm  
13 sorry I'm making you walk.

14 MS. BENAVIDEZ: The question is: Is it  
15 important to be presumed as strong in a prison  
16 setting?

17 MS. BHALLA: Yes.

18 MS. BENAVIDEZ: I believe so, yes.

19 MS. BHALLA: And I'm going to switch gears  
20 a little bit. As part of that, let's just take the  
21 hypothetical a little further. Let's say -- I have  
22 to think about how to phrase this. Mr. Fink has  
23 power and influence. We've all agreed with that.  
24 And he heard the plans about the bank robbery and he  
25 didn't say anything. Okay? Are you following me?

1 We're good so far?

2 And then Ms. May says, "Well, Mr. Fink  
3 told me to do this. Mr. Fink told me to do this."

4 And Mr. Fink is in prison. What do you  
5 think Mr. Fink is going to say when people asked him  
6 if he was part of the plan, if he was part of the  
7 scheme?

8 MS. BENAVIDEZ: Is that assuming that the  
9 lady is not in prison with him?

10 MS. BHALLA: No, she's in prison with him.

11 MS. BENAVIDEZ: They're in prison  
12 together? What do I think Mr. Fink is going to say?

13 MS. BHALLA: Yeah.

14 MS. BENAVIDEZ: He'll probably deny it.

15 MS. BHALLA: And what do you think happens  
16 if he denies it?

17 MS. BENAVIDEZ: If he denies -- what do I  
18 think happens to him in prison?

19 MS. BHALLA: Well, if he's in prison with  
20 the other bank robbers and all the other bank  
21 robbers are there, okay, and people know -- and he's  
22 part of this group, and they're saying that he was  
23 part of it; he says, "No, no, no, that wasn't me" --

24 MS. BENAVIDEZ: They'll back him if he's  
25 powerful.

1 MS. BHALLA: You think they will back him  
2 if he's powerful?

3 MS. BENAVIDEZ: Yeah. They'll back his  
4 story as opposed to the lower level ones that got  
5 caught.

6 MS. BHALLA: Okay. Does anybody else have  
7 a different take on that? Does anybody else feel  
8 differently about that? Hands?

9 Okay. Ms. Taylor, is that you back there?

10 MS. TAYLOR: It is.

11 MS. BHALLA: You have something to say  
12 about this because you're involved in the  
13 conspiracy.

14 MS. TAYLOR: No, I guess I just have a  
15 question about -- did you just present that the  
16 structure in prison and expectation in prison is  
17 different from outside of prison?

18 MS. BHALLA: That's exactly where I was  
19 going. Thank you.

20 MS. TAYLOR: But I guess -- I don't think  
21 that suits your case, I think. I'm sorry, but I  
22 just feel like you just said that some things are  
23 more acceptable in prison because of the power  
24 structure than outside of prison, which just changed  
25 the whole -- my understanding of power and what



1 people have to do to get along. Because if they  
2 appear weak in prison, that's not the right thing to  
3 do. So you have to not tell the truth because you  
4 don't want to appear weak in prison.

5 MS. BHALLA: Okay.

6 MS. TAYLOR: So --

7 MS. BHALLA: And I think --

8 MS. TAYLOR: That confuses me a little bit  
9 about where you're going.

10 MS. BHALLA: Well, I tell you what.  
11 Nobody ever told us it was going to be an easy case;  
12 right?

13 MS. TAYLOR: No. Okay, I'll let it go.

14 MS. BHALLA: And I'm going to keep your  
15 comments well in mind in opening statements. But  
16 you did me a favor, Ms. Taylor, because you brought  
17 up a point and it was something I wanted to ask  
18 about.

19 MS. TAYLOR: Okay.

20 MS. BHALLA: Do people think that the  
21 culture in prison is different than the culture on  
22 the outside?

23 MS. TAYLOR: Didn't we just say that?

24 MS. BHALLA: Yeah. But -- okay. But do  
25 you think that that is -- is that okay with you?

1 MS. TAYLOR: I understand it.

2 MS. BHALLA: Okay.

3 MS. TAYLOR: Well, in my understanding of  
4 prison. Now, I have to go -- I have a younger  
5 brother who is in prison who is not a part of the  
6 gang situation and is totally -- even though he  
7 murdered someone when he was younger, he does  
8 classes and he got his degree, and he -- so he is  
9 the total opposite of -- and he was in a gang of  
10 what we see on TV as what gangs are. The rest of us  
11 don't really know what happens, and I only visited  
12 him three times because he lives in Indiana and I  
13 live here. But he doesn't talk about it. He has  
14 made his life meaningful in the prison system.

15 So you know, I have two different ways.  
16 But I guess when you start a scenario that says what  
17 happens if so and so appears weak in prison like  
18 that's a bad thing, or that's the reason not to tell  
19 the truth, then that just makes my mind go a  
20 little -- I don't know.

21 MS. BHALLA: You have a hard time with it.

22 MS. TAYLOR: I do have a hard time with  
23 it, because I think -- I'm not a lawyer, but I think  
24 you would want to say that -- you wouldn't want to  
25 push that structure that you have to do, and follow

1 the structure in prison to appear strong and not be  
2 afraid, because if you do something wrong or not the  
3 right thing, you're going to get harmed in prison.

4 MS. BHALLA: Well, and I think that that's  
5 kind of the reason we have this voir dire, because  
6 we want to know what people's opinions are on topics  
7 that might come up.

8 MS. TAYLOR: Okay.

9 MS. BHALLA: Which is why --

10 MS. TAYLOR: You're doing a good job then.

11 MS. BHALLA: Good. I'm glad.

12 Mr. McNair, it looks like you wanted to  
13 say something.

14 MR. McNAIR: I just nodded my head.

15 MS. BHALLA: I think you can help me out,  
16 because I'm from Mississippi, too. Where in  
17 Mississippi are you from?

18 MR. McNAIR: Greenville.

19 MS. BHALLA: Greenville?

20 MR. McNAIR: And you're from Oxford.

21 MS. BHALLA: How did you know I was from  
22 Oxford?

23 MR. McNAIR: Because you look like you're  
24 from Oxford.

25 MS. BHALLA: I think I might take that as

1 a compliment. I was actually born in Pascagoula and  
2 raised in Jackson, but I did go to law school in  
3 Oxford.

4 MR. McNAIR: Indianola. I was a  
5 fisherman.

6 MS. BHALLA: You were? My grandma was  
7 from Indianola.

8 MR. McNAIR: Indianola, yeah.

9 MS. BHALLA: So that's close by.

10 MR. McNAIR: Very good spot for the blues  
11 concerts.

12 MS. BHALLA: That's right.

13 So what do you have to say about all this?

14 MR. McNAIR: Well, just on the conspiracy  
15 side, if I told someone something, or someone told  
16 me something that they were going to do, the  
17 thing -- they make you a witness because you  
18 listened to them, for starters. And as far as the  
19 culture inside of prison, my extent with the prison  
20 system, there is no honor among thieves.

21 MS. BHALLA: Say that again?

22 MR. McNAIR: There is no honor among  
23 thieves.

24 MS. BHALLA: Okay.

25 MR. McNAIR: So if I rat one of these guys

1 out, I'm not going to last long.

2 MS. BHALLA: You're not going to last  
3 long?

4 MR. McNAIR: No.

5 MS. BHALLA: Okay. And so you might say  
6 something that's not true just to get by?

7 MR. McNAIR: They will say something  
8 that's not going to benefit them. It may not be  
9 directly directed to anyone in their gang --

10 MS. BHALLA: Right.

11 MR. McNAIR: -- but they're going to say  
12 something that's directed to someone else. And they  
13 can keep rolling over and over and over. Next thing  
14 they've got a fight and on the yard is where  
15 everything takes place.

16 MS. BHALLA: All right.

17 Ms. Hournbuckle, I saw a hand. I got  
18 everybody talking.

19 MS. HOURNBUCKLE: I would think that  
20 depending on how close Mr. Fink is to maybe his  
21 parole or to the end of his sentence might have a  
22 bearing on what he would or wouldn't say.

23 MS. BHALLA: Okay. So that might be  
24 something you'd want to know? Okay. That's good to  
25 know. Thank you.

1 Mr. Rodriguez, you had a hand?

2 MR. RODRIGUEZ: So in my experience  
3 working with the criminal system, I've been on the  
4 other side with defendants where they have literally  
5 been scared for their life and every single piece of  
6 evidence that comes in is checked by your cellmates  
7 and people on top. That's their call. So it is a  
8 real threat, and that's just based on my experience.

9 MS. BHALLA: Okay. Thank you. I  
10 appreciate that.

11 Any other hands? Any other comments?  
12 Okay.

13 I want to go back a little bit. Now that  
14 we're into full-on prison culture, I want to bring  
15 up a little situation. I think Ms. Duncan touched  
16 on it a little bit. So let's say that Ms. Duncan  
17 asked you why Ms. May or Ms. Taylor might implicate  
18 other people that may or may not have been involved.  
19 What are some of the reasons people would want to  
20 implicate others? What are some reasons that you  
21 would want to say other people were involved? What  
22 might you get out of it?

23 Let's see. Oh, yay. I hope you're not  
24 yawning and stretching. You're going to get called  
25 out for it. Can you tell us your name, please?

1 MR. BURTON: Sean Burton.

2 MS. BHALLA: Okay. And Mr. Burton, what's  
3 your answer to that?

4 MR. BURTON: They're going to plead their  
5 sentence out. They're in some game. They're not  
6 just coming freewill to give all the information  
7 out. They have something to gain from it.

8 MS. BHALLA: Do you think that affects  
9 their credibility?

10 MR. BURTON: Absolutely.

11 MS. BHALLA: Absolutely? Does anyone else  
12 think that that would affect their credibility or  
13 that that would matter?

14 I'm sorry, this is a hard name for me  
15 because I am from Mississippi. You're going to have  
16 to pronounce it.

17 MS. YATSATTIE: Ms. Yatsattie.

18 MS. BHALLA: Yatsattie. Did I do it  
19 right? Okay.

20 MS. YATSATTIE: I think it's just like  
21 little kids. If you have -- all my nieces, they all  
22 do something, they all want to tell on each other  
23 hoping they all get in trouble versus one person  
24 getting in trouble more because they're the  
25 ringleader.

1 MS. BHALLA: How do you tell who is  
2 telling the truth?

3 MS. YATSATTIE: You just learn to tell the  
4 truth with them. You can just tell, like she said  
5 earlier, with body language and stuff like that.  
6 You can just -- you just kind of have to look at  
7 them and see if they're telling the truth.

8 MS. BHALLA: What things would you look  
9 for to see if they're telling the truth?

10 MS. YATSATTIE: If they're stumbling over  
11 their words, or if they're not looking directly at  
12 you, or stuff like that.

13 MS. BHALLA: Whether or not they have  
14 their hand in the cookie jar?

15 MS. YATSATTIE: Um-hum.

16 MS. BHALLA: Anybody else? Anybody else  
17 have any ideas about how you would handle that?

18 Ms. May?

19 MS. SMITH: Ms. Smith.

20 MS. BHALLA: I do it every time. I'm  
21 sorry.

22 MS. SMITH: I think it comes back to the  
23 evidence, because I mean, you have to have -- you  
24 can read body language and all that, but you've got  
25 to come back to the evidence. And even if it's a



1 child, if he done that or not, you can just accuse  
2 him or say, "I know you," but how do you know he did  
3 that unless you find out how he did it?

4 MS. BHALLA: What kind of evidence would  
5 you want to see?

6 MS. SMITH: I don't know.

7 MS. BHALLA: Video, maybe?

8 MS. SMITH: I'm not sure. Not video, if  
9 it's a kid.

10 MS. BHALLA: Oh. I was thinking about the  
11 bank robber again. I'm sorry.

12 MS. SMITH: There would have to be  
13 evidence behind it that they did it, because I've  
14 accused my sons of stuff that they really didn't do.  
15 Because they did so many things, and then you  
16 automatically want to accuse them.

17 MS. BHALLA: That's how it worked for me  
18 with my older brothers growing up. I was always  
19 able to get them in trouble.

20 MS. SMITH: And evidence, maybe if  
21 somebody was there that seen it.

22 MS. BHALLA: Okay. So maybe eyewitnesses  
23 to the scene?

24 MS. SMITH: Or -- yeah, like he said, I  
25 don't know, find a little evidence here and there.

1 MS. BHALLA: Okay. One of the things we  
2 touched on a little bit -- I'm trying to find my  
3 note, because I singled some people out -- was  
4 whether or not being in a gang makes you guilty for  
5 the actions of the gang. And we've talked about  
6 that a little bit, but in some of your  
7 questionnaires, people indicated that they strongly  
8 agreed that if you were in a gang, you were guilty  
9 for the actions of that gang. And does anybody  
10 think that that's still true, that if you're in a  
11 gang, like Mr. Fink and Ms. May and Ms. Taylor and  
12 Ms. Smith, okay, that because they're in that gang,  
13 and this gang commits bank robberies, that they are  
14 automatically guilty of that bank robbery?

15 Yes, Ms. Yatsattie?

16 MS. YATSATTIE: I think it goes back to  
17 knowing what you know when you know. Because if you  
18 did know something, then you're guilty of it, too,  
19 by not relaying the information.

20 MS. BHALLA: Okay. So you think you have  
21 an affirmative duty to stop it even if you're not  
22 part of it?

23 MS. YATSATTIE: Yes.

24 MS. BHALLA: Okay. Does anyone else feel  
25 that way?

1           Mr. Hassell? So Mr. Hassell, you think  
2   that Mr. Fink, knowing what these two or three are  
3   up to, he has an affirmative duty to stop it?

4           MR. HASSELL: He has a moral obligation to  
5   say something about it to somebody.

6           MS. BHALLA: What about a legal  
7   obligation?

8           MR. HASSELL: I think he has a legal  
9   obligation also.

10          MS. BHALLA: Okay. Does anybody else  
11   think that he has a legal obligation to do that?

12          Go ahead. Okay, let's go with Ms. Wolfe.  
13   I think you raised your hand.

14          MS. WOLFE: I think there is a legal  
15   obligation outside in our world.

16          MS. BHALLA: Okay.

17          MS. WOLFE: And that probably applies for  
18   in prison as well. But because the culture is so  
19   different, I don't know that that would be a safe  
20   thing to do.

21          MS. BHALLA: Okay. Thank you. And that  
22   sort of brings me to my next topic. We've talked a  
23   little bit about safety and about fear and about  
24   gangs and about prison. And you're going to hear  
25   evidence about gangs, and you're going to hear

1 evidence about prisons, and you're going to hear  
2 evidence about murders. And can you all put that  
3 aside and decide whether or not Carlos Herrera is  
4 accused of doing what the Government says he did,  
5 independent of everybody else in this courtroom and  
6 independent of everybody else that may or may not be  
7 in a gang? Because that's what we're going to ask  
8 you to do, and that's what the Court is going to ask  
9 you to do. Can everybody do that? Mr. Baca?

10 MR. HOUGHTALIN: Richard Houghtalin. I've  
11 never joined a gang, but I grew up on the outskirts  
12 of Las Cruces and I always noticed that people, when  
13 I was growing up -- you rode the bus, there was gang  
14 members on the bus, you're just -- it was  
15 automatically assumed that you were in a gang. And  
16 it grew up throughout my whole life. Like I've been  
17 for a speeding ticket, like the other lawyer said, I  
18 got pulled over for a speeding ticket and I never  
19 went to -- didn't pay my fines and one of my babies'  
20 mamas worked for the sheriff's department and sent  
21 out four officers to my grandparents' house where  
22 she made a phone call and arrested me at gunpoint,  
23 scared my grandparents, and pretended to be marshals  
24 when they were actually sheriffs that had  
25 association with my ex. And on the way, as they

1 handcuffed me, they were assuming just because I --  
2 people that are known for that activity that  
3 happened in the area, in the surrounding area, it  
4 made me like I was guilty, I was already profiled  
5 before I was even profiled when they were taking me  
6 to jail, when they classify you over there. Because  
7 when they took me, they said they had a warrant for  
8 my arrest. When they took me to detention they had  
9 to take me back -- on the way over there, they were  
10 saying I belonged to a certain gang, they called me  
11 names, harassed me, handcuffed me, four guys, and  
12 took me to the detention center. And they had a  
13 copy of the warrant. So when they handcuffed me,  
14 took me down, after they laughed, they had a good  
15 time, they had to put me back in the truck because  
16 it wasn't the original city ticket.

17           So when that happened, it was kind of like  
18 karma. Karma -- to me, it's like, like I said,  
19 we're all judged. We're all judged, but we're all  
20 innocent but we're all guilty about something in  
21 some different kind of way. I always think it's  
22 like a stigmata. Just because you talk to certain  
23 people, whether you're rich people -- talking to  
24 rich people doesn't make you rich. Poor people,  
25 when you talk to poor people, it's a different --

1 society is just kind of in a whirlpool right now.

2 MS. BHALLA: So you're going to agree with  
3 me, then, that just because you're in a gang doesn't  
4 mean you're a murderer.

5 MR. HOUGHTALIN: I wasn't in a gang. I  
6 was accused --

7 MS. BHALLA: No, no, no. I'm saying, not  
8 you; in general. Like, just because somebody is a  
9 member of a gang, that doesn't mean that they're  
10 guilty for the crimes of the gang?

11 MR. HOUGHTALIN: Yes, ma'am.

12 MS. BHALLA: Right. And you know that  
13 because you know what it feels like to be unfairly  
14 accused of something you didn't do.

15 MR. HOUGHTALIN: Yes, because I've been  
16 through the process on -- my questionnaire asked me  
17 if I'd been represented by an attorney when I did  
18 six years of adjudicated deferred probation, and the  
19 judge told me I was innocent because adjudicated  
20 deferred, you did the whole six years; I wasn't  
21 guilty, because I was set up as a rat. They thought  
22 I was bringing marijuana, which I never did. And  
23 the guy I was giving a ride to specifically told me  
24 to my face that he hates people like me, and I don't  
25 even know the man. He was my dad's roommate.

1           So I stood by my side and took the whole  
2 six years. I finally broke down, like, I'm  
3 innocent. I was, like, I didn't do no harm. I was  
4 just -- didn't know the gun was in the car. I was,  
5 like, okay, that's why I chose the six years. And I  
6 went to court because after four years of doing  
7 community service, 400 hours of community service,  
8 paying \$4,000 and still owing -- having like 10  
9 different probation officers, having to report to  
10 Texas, having to go through the system, it can play  
11 a toll on your head. And I finally gave up, and  
12 when the judge -- some judges are fair, some judges  
13 can be biased, I've noticed, and my judge wanted to  
14 give me a lesser sentence for trying to violate my  
15 probation. Because I was tired of it, I gave up.  
16 I'm, like, the system was beating me.

17           So if I wouldn't have given up, I took a  
18 year in a treatment facility, which is actually a  
19 prison. It was a treatment facility, and I  
20 completed it in nine months, because if I didn't  
21 complete those six years, the judge told me I would  
22 go back, get three years, and then I'd be convicted.  
23 So I was innocent the whole time.

24           So that's why on my questionnaire, I  
25 really wasn't represented by an attorney because the

1 only time I saw him was when, "What do you plea?  
2 This is what you plea? This is what we're going to  
3 give you."

4 So I've been through the prison system and  
5 it's different.

6 MS. BHALLA: We appreciate you sharing  
7 that story, and I think that maybe it highlights how  
8 important it is for us not to judge a book by its  
9 cover and not to assume someone is guilty by the  
10 company that they keep. And I think everyone can  
11 agree with me that that's what we have to do in this  
12 case; right? Okay.

13 And this is my last little line. I'm  
14 probably running out of time anyway.

15 Hearing what you've heard so far in voir  
16 dire and from the judge and from the Government, is  
17 anybody afraid to sit on this jury? Is anybody  
18 afraid to render a fair verdict? Yes, Ms. Apodaca?

19 MS. APODACA: (Inaudible.)

20 Hold on one second. Say that into the  
21 microphone, Ms. Apodaca.

22 MS. APODACA: The thought of retaliation  
23 is pretty scary.

24 MS. BHALLA: Okay. And is that something  
25 that is going to weigh on your mind when you hear



1 evidence on this case and when you're deliberating  
2 with your fellow jurors?

3 MS. APODACA: I like to think I'm a fair  
4 person and I can look at the evidence and make a  
5 decision based on that solely.

6 MS. BHALLA: Okay.

7 MS. APODACA: But in the back of my mind,  
8 oh, my gosh, if it goes one way or the other, you  
9 know, it could happen.

10 MS. BHALLA: And that's a good point.  
11 Because the purpose of voir dire, the purpose of all  
12 of this, is for us to decide -- the Government, the  
13 defense lawyers, the Court -- who's the right jury  
14 for this case. And I know everybody wants to follow  
15 the law. Everybody wants to follow the judge's  
16 instructions. Everybody is going to try to do that.  
17 But this is the time to tell us if you're just going  
18 to struggle doing that because of a fear of  
19 retaliation or because of a bias for or against law  
20 enforcement, or because of a bias about gangs, or  
21 because of a bias about drugs.

22 If there's going to be something that  
23 comes out of this courtroom that is going to weigh  
24 on your mind or concern you in such a way that  
25 you're going to have a hard time or you're not sure

1 that you can follow the instructions from the judge  
2 and the instructions from the lawyers -- from the  
3 judge; we'll all do what the judge says -- now is  
4 the time to tell us.

5 Okay, Ms. Hournbuckle?

6 MS. HOURNBUCKLE: Not having been involved  
7 in this kind of situation before and having four  
8 defendants I'm a little concerned that in my mind  
9 things are going to get kind of muddled. And I  
10 would hope that because of your presentation that  
11 wouldn't happen. But with four people being  
12 defendants, I'm concerned that I would be able to  
13 separate the different charges against each one, and  
14 between or among all four, and be fair to each one  
15 about each charge. I'm just seeing the water just  
16 getting really muddy.

17 MS. BHALLA: Okay. And I appreciate you  
18 bringing that up, because that's another thing that  
19 you're going to have to do in this case. You're  
20 going to have to weigh the evidence against each  
21 defendant on his own merit. And do you think you're  
22 going to be able to do that?

23 MS. HOURNBUCKLE: That's what I don't  
24 know. I honestly don't know.

25 MS. BHALLA: Okay. And does anybody else

1 feel that way?

2 Uh-oh. Let's start in the box. Did  
3 somebody raise their hand over here?

4 MS. MONTES: Montes.

5 MS. BHALLA: Okay. Hi.

6 MS. MONTES: I'm just scared because, like  
7 she said, there's four of them, you know. And I  
8 mean, I forget what I ate yesterday. And I'm really  
9 scared for me to make a mistake, because we're  
10 talking about four people's lives.

11 MS. BHALLA: And that's fair. And it is  
12 important. And you know, let me just say this. The  
13 lawyers and the Court are going to do their best to  
14 tell you what the rules are and to show you all the  
15 evidence and to lay out --

16 MS. MONTES: I'm not worried about the  
17 rules. I'm worried if I forget one of the evidence,  
18 I'm going to go like, "Oh, man, guilty," you know.

19 MS. BHALLA: Your Honor, could I just have  
20 a moment?

21 THE COURT: You may.

22 (A discussion was held off the record.)

23 MS. BHALLA: Ms. Montes, what if I told  
24 you that you're going to be able to take some of the  
25 evidence back into the jury room with you and you're

1 going to be able to look at it again? Would that  
2 help you?

3 MS. MONTES: Yeah, I guess it would.

4 MS. BHALLA: Okay. So you're going to be  
5 able to review what you've seen and what you've  
6 heard, and you're also going to be able to take  
7 notes.

8 MS. MONTES: So we're going to be able to  
9 take notes? Oh, okay.

10 MS. BHALLA: Yes. Does that hopefully  
11 relieve --

12 MS. MONTES: Because I'm, like, I mean  
13 this...

14 MS. BHALLA: We're not going to give you a  
15 quiz at the end of the day.

16 MS. MONTES: I want to do right. Like you  
17 said, you can't judge a book by its cover. My  
18 daughter has a friend. She grew up with these huge  
19 tattoos; people get scared of him. I look at him,  
20 he's a teddy bear. I mean, he won't hurt a fly.  
21 That's why I say you can't judge a book by its  
22 cover, because he looks like a gang member, but he's  
23 not.

24 MS. BHALLA: Well, let's address this  
25 concern. If people are able to take notes, they're

1 able to take evidence back in the jury room, they're  
2 able to deliberate with their other jurors about the  
3 evidence that they've heard, do you think you can  
4 weigh the evidence in that situation?

5 MS. MONTES: Yeah, we're going to have all  
6 the evidence there and go backtrack and -- you know,  
7 because this is a big decision.

8 MS. BHALLA: And we appreciate you taking  
9 it seriously.

10 MS. MONTES: Yeah. It's somebody's life.

11 MS. BHALLA: That's right.

12 Does anybody else have any comments on  
13 that, or does that make you feel better, Ms.  
14 Hournbuckle? Okay. Ms. Benavidez?

15 MS. BENAVIDEZ: So not in the complexity  
16 of the case or anything, but similar to  
17 Ms. Apodaca's comments, that fear is there. Do I  
18 think it would impair me to the point where I can't  
19 go through the process? I'm not saying that. But I  
20 think it pretty much mirrors what she said, yeah.  
21 It's a thought, and it's definitely a real thought  
22 that you consider.

23 MS. BHALLA: Does it give you concern that  
24 you might not be the right juror for this case?

25 MS. BENAVIDEZ: I don't know how you would

1 quantify that. I mean, I don't -- I don't know that  
2 it concerns me that much to say I couldn't do it.  
3 But it is a thought. I guess just basically similar  
4 to what she said.

5 MS. BHALLA: Okay. So you think that you  
6 might have some fear affecting your decision-making  
7 process?

8 MS. BENAVIDEZ: Not the decision-making  
9 process per se, but just that individual fear, like  
10 she said, in the back of your head, in the back of  
11 your mind.

12 MS. BHALLA: And --

13 MS. BENAVIDEZ: I think I'm sound, I  
14 think, like you said, you use your common sense, you  
15 use your judgment. I'm sound in that. But the  
16 first question you asked was about fear.

17 MS. BHALLA: Yeah. And I think that the  
18 question is: Is that fear going to affect how you  
19 make decisions?

20 MS. BENAVIDEZ: I don't think so.

21 MS. BHALLA: Okay. Does anybody else  
22 think that a fear of this case is going to affect  
23 how they make decisions?

24 MR. GONZALES: So yes, I do have a  
25 concern. My name has been said.

1 MS. BHALLA: Tell me your name again.

2 MR. GONZALES: Adrian Gonzales.

3 MS. BHALLA: Okay. Sorry. That wasn't  
4 very nice of me to do. We have to let the court  
5 reporter know who's talking.

6 MR. GONZALES: Anyway, my name's been  
7 said. My place where I live has been said. I mean,  
8 I own a company, you know. I don't know. I just  
9 kind of -- it is concerning, you know, if I were to  
10 be a juror, whatever, you know, and these guys were  
11 convicted and they -- you know, if it is true about,  
12 you know, what they did, how do I know they're not  
13 going to come after me, or something like that is  
14 going to happen? You know, I just want to throw it  
15 in there. You know, I don't feel comfortable and I  
16 really don't want no part of this.

17 MS. BHALLA: Okay. And that's -- I'm glad  
18 you told us that. That's the kind of stuff we need  
19 to know. So I'm going to ask you what I asked Ms.  
20 Benavidez. Would that concern influence how you  
21 make a decision in this case?

22 MR. GONZALES: Yes.

23 MS. BHALLA: Yes, it would? Okay. Thank  
24 you.

25 Anybody else? Uh-oh.

1 I've got Mr. Fink back here. He's just  
2 mad because I put him in the conspiracy.

3 MR. FINK: I'm not a conspirator. You  
4 know, I guess my concern is that -- about the  
5 retaliation, about the fact that when we were in  
6 orientation we were given a number to protect our  
7 anonymity, and as soon as we walked in here, we're  
8 talking about our spouse, where we work, and we can  
9 easily identify the fact that -- and I reflect,  
10 cool, I'm number 59. Kind of impress that a few  
11 times. I'm number 59. And I don't know what  
12 happened to that, but I talked to the clerks, and  
13 they said that's unusual, you know. They're using  
14 your names? I have anxiety about this, for sure.

15 MS. BHALLA: Let me ask you a little bit  
16 more about that. Did someone in the clerk's office  
17 say it was unusual for us to be using your names?

18 MR. FINK: Yes.

19 MS. BHALLA: Okay. Did someone in the  
20 clerk's office tell that to more than one person in  
21 the jury pool? They told it to everybody.

22 VENIRE PANEL MEMBER: During orientation.

23 VENIRE PANEL MEMBER: They said identify  
24 yourself by your number.

25 MS. BHALLA: Okay. And did they



1 specifically tell you not to identify yourself by  
2 your name?

3 VENIRE PANEL MEMBER: Yes.

4 MR. FINK: I don't know that that -- I  
5 don't recall that.

6 MR. BURTON: They told us that going  
7 forward, we were to address ourselves as juror 58 or  
8 whatever our number was.

9 MS. BHALLA: Let me try to parse this out.  
10 I'm going to try to identify everybody that thinks  
11 that their names were supposed to remain anonymous.  
12 So if you thought that your name was supposed to  
13 remain anonymous, can you please raise your hand?  
14 Oh, Lord, have mercy.

15 MS. JACKS: For the record, every juror.

16 MS. BHALLA: Yeah. Your Honor, do you  
17 think this might be a good time to take a break?

18 THE COURT: No, you need to finish up.

19 MS. BHALLA: Okay. So in the interests of  
20 expediency, I'm going to try to do this as quickly  
21 as we can. I'm going to pass the microphone around  
22 and ask you to say your name and number. Let's just  
23 start in the back.

24 THE COURT: I don't think you're going  
25 to -- you're on borrowed time here, so I don't think

1 you're going to have time to do that.

2 (A discussion was held off the record.)

3 MS. BHALLA: Okay. Let's do it this way.

4 That's better, Ms. Duncan. Thank you.

5 If you were not told this information that  
6 your name wasn't supposed to be used, can you raise  
7 your hand? Ten.

8 VENIRE PANEL MEMBER: I don't remember.

9 MS. BHALLA: That's okay. If you don't  
10 remember, you don't have to answer.

11 MR. BAXA: 65. I guess I don't have to  
12 say any more. The only reason the three of us, I  
13 believe, didn't hear about it is because we were  
14 late and didn't get orientation. We kind of just  
15 got the Cliff Notes of it when we were in line.  
16 That's the only reason why we didn't hear about it.

17 MS. BHALLA: Okay. I'm going to try and  
18 wrap this up. You know, the great thing about our  
19 system is that it's an open system and it's a public  
20 system, and that's what makes our system different  
21 from other systems, other judicial systems in the  
22 world. Does anybody have a problem with that? Does  
23 anybody think that's not the way it should be?

24 Okay. I think I'm going to wrap up here  
25 and hand this over to whoever is next, Your Honor.

1 THE COURT: All right. Thank you, Ms.  
2 Bhalla.

3 Ms. Justine Fox-Young, do you have  
4 additional direct voir dire examination you wish to  
5 conduct on behalf of Mr. Perez?

6 MS. FOX-YOUNG: Your Honor, Mr. Villa is  
7 going to do the voir dire.

8 THE COURT: All right. Mr. Villa.

9 MR. VILLA: Thank you, Your Honor.

10 Good morning, ladies and gentlemen. My  
11 name is Ryan Villa. I know you met me yesterday.  
12 My co-counsel is Justine Fox-Young. We represent  
13 Rudy Perez. And with me at counsel table is Eda  
14 Gordon, who is helping me out and trying to keep  
15 track of everybody today.

16 So I think I'll come back to some of the  
17 things that Ms. Bhalla was talking to you about, but  
18 you know, I think it's important to remember that  
19 everybody here brings their own set of experiences,  
20 their own set of life experiences of family and  
21 friends, and that shapes the way that we feel. And  
22 that's obviously what we've been trying to do for  
23 the last day and a half or so, is explore how that  
24 affects your ability to be jurors, because I think  
25 your job, and the one you're doing here today,

1 whether you get selected or not, is one of the most  
2 important things we can do in our society where we  
3 believe that the jury system is important. Y'all  
4 are going to have to, if you get seated on the jury,  
5 decide whether these four men are guilty or not  
6 guilty. And so that job, that role you have, it's  
7 important for us to make sure that we have the right  
8 folks on the jury to do that.

9 And so it doesn't matter what your answers  
10 are. There are no wrong answers. If there is  
11 something you want to talk about with just the  
12 judge, y'all know we can do that. So I'm going to  
13 ask some questions, and there are no wrong answers.  
14 Okay? There is nothing you can say that's good or  
15 bad, whether you can be fair and impartial, whether  
16 you can't be fair and impartial. It's just  
17 important that you tell us your views.

18 So let's get back to talking a little a  
19 little bit about prison. All right? We heard about  
20 prison gangs. We got some examples, and you heard  
21 that this case may involve a prison gang. So I want  
22 to ask: Why do you think somebody in prison might  
23 join a prison gang? So I think we have a hand over  
24 here in the back.

25 MS. LIEBHART: For protection, safety from

1 others. If there is a group that they all have each  
2 other's back, a group is stronger than an individual  
3 sometimes.

4 MR. VILLA: Ms. Liebhart, why would  
5 somebody, if they're in prison, need protection?

6 MS. LIEBHART: If they're not as muscular,  
7 or out of shape, or maybe the particular crime  
8 they're in there for maybe puts them at -- makes  
9 them vulnerable to abuse from other prisoners. It's  
10 just how I see things.

11 MR. VILLA: I appreciate that, Ms.  
12 Liebhart.

13 Were there other hands to that question?  
14 So up here in the jury box. Is that Mr. Compton?

15 MR. COMPTON: Yes.

16 MR. VILLA: We'll wait till you get the  
17 microphone.

18 MR. COMPTON: Yes. You may not have a  
19 choice. You might have to -- I grew up in Phoenix,  
20 Arizona, and I just remember, way back then, when  
21 everything was coming up with violence and stuff in  
22 prisons, everything I read and heard was, you know,  
23 you had to join, if you went to the -- whatever the  
24 highest level of prison was there, I guess, federal  
25 or something, or state, you had to join a gang. All

1 the Anglos joined the Aryan Brotherhood, and  
2 Hispanics joined what was called the Mexican Mafia.  
3 I don't know if they're still around, but the  
4 Mexican Mafia. I mean, you had to join. That was  
5 my understanding. And I just -- I don't know if  
6 it's that way here, but I imagine it is.

7 MR. VILLA: Why did you think that was  
8 that you had to join a prison gang?

9 MR. COMPTON: Well, you know, there's the  
10 racial or ethic issue there, and just tribalism, I  
11 guess. And there's violent people in there, and you  
12 just -- like somebody else said, for your own  
13 protection, you're safer if you've got friends than  
14 if you don't.

15 MR. VILLA: Thank you, Mr. Compton.  
16 Did others have thoughts about that? Any  
17 hands? Okay. In the back. Thank you. The back  
18 corner. We'll wait for the microphone to get there  
19 to you. Is that Ms. Murphy?

20 MS. MURPHY: Yes. I imagine it's more  
21 like a corporation, that it's strength in numbers,  
22 and if you have a bigger corporation, you are  
23 stronger and you're more powerful in that hierarchy.  
24 Like I said, their society is different than our  
25 society, and they have some type of hierarchy, and

1 it's got to be whoever has the power is at the top,  
2 and then you work your way down. And if you have  
3 strength in numbers, you're going to be more  
4 powerful.

5 MR. VILLA: Why are you focusing on the  
6 word "powerful?" Correct me if I'm wrong.

7 MS. MURPHY: Meaning you can control the  
8 other groups that don't have as many people. You  
9 have a bigger army, so to speak.

10 MR. VILLA: So we see that in our society  
11 with corporations?

12 MS. MURPHY: Absolutely.

13 MR. VILLA: And you're talking about now  
14 how that effect happens in prison. Why do you think  
15 that occurs in prison?

16 MS. MURPHY: Self-preservation, I would  
17 imagine. If you want to survive, which I think most  
18 people would want to, you're going to do whatever is  
19 necessary. Whether it's legal or not, you're going  
20 to do what's necessary for your own survival.

21 MR. VILLA: All right. Thank you, Ms.  
22 Murphy.

23 Anybody else, thoughts on that? Is that  
24 Mr. Burton?

25 MR. BURTON: Yes.

1 MR. VILLA: Go ahead.

2 MR. BURTON: So it's the whole culture  
3 thing. In prison, when there's the different races  
4 divided up or -- and that's how it's easily divided.  
5 It's not necessarily from a different area. So  
6 that's why I think the force or the drive to join is  
7 there. But truth be told, culture in prison is  
8 being family members with a corrections officer; the  
9 same can be said about the corrections officers.  
10 They themselves are, in a sense, based on what  
11 people are just defining as a gang, they themselves  
12 are a gang.

13 MR. VILLA: Now, you mentioned ethnic or  
14 racial divide. Mr. Compton talked a little bit  
15 about that. Of course, we see that some in our  
16 society. But why do you think that occurs in  
17 prison?

18 MR. BURTON: It's to survive, safety.

19 MR. VILLA: But I guess I'll challenge you  
20 just a little bit on that. I could be with a group  
21 of -- maybe my corporation is a big corporation. It  
22 doesn't matter what the race is. If it's a bigger  
23 corporation, I'm safer. So why do you think there  
24 might be these racial divides?

25 MR. BURTON: I believe it's easily



1 understood to be more like-minded. So somebody  
2 coming from -- I'm going to use myself -- even  
3 though I may not look it, having a Hispanic mother,  
4 it was easier for me to get along and connect with  
5 Hispanic friends versus other people growing up.

6 MR. VILLA: That makes sense.

7 I think we have a hand over here.

8 Ms. Smith. Okay?

9 MS. SMITH: I think society in general,  
10 they've always taught us to do what's right from the  
11 beginning. And you have a choice to do what's  
12 wrong. It's the same in prison. They go to prison  
13 because they did wrong, and in there they try to  
14 teach them to do what's right. I think it's a  
15 choice. I mean, I think a better man makes a choice  
16 to do what's right. I mean, even if people are  
17 around you -- and it's a hard choice sometimes, but  
18 even if people around you are doing wrong, even if  
19 it's a choice to join a gang. Because I have a  
20 close friend of mine who was in prison almost his  
21 whole life, and he chose to separate himself from  
22 that. It was hard, but he done it. And I think the  
23 bigger man is going to choose what's right, if it's  
24 sometimes going to hurt you, to choose what's right.  
25 That's what we've always been taught, to do what's

1 right. And when you don't, you suffer the  
2 consequences for it.

3 Q. Let me ask you, Ms. Smith, if you heard  
4 evidence that, say, Mr. Perez was a member of a  
5 prison gang, would that influence your decision  
6 about whether he's guilty of the specific crime that  
7 the Government accuses him of?

8 MS. SMITH: No, I think you have to have  
9 evidence of that. Just because he's in a gang don't  
10 mean he did this. Maybe somebody got mad at him and  
11 accused him of it. I still give the individual the  
12 shadow of the doubt.

13 MR. VILLA: Now, what if it comes into  
14 your mind as you're going through this trial, well,  
15 you're hearing evidence that he's in a prison gang,  
16 maybe you're concerned about the circumstances in  
17 which he became part of the gang, what else might  
18 have happened while he was part of this prison gang.  
19 Would that influence your decision maybe about  
20 whether he's guilty of this specific crime?

21 MS. SMITH: No. When he joined the gang,  
22 he could have changed. So it's not going to --  
23 either way, I'd have to have evidence if he did a  
24 specific crime. The better man is the one who does  
25 right. He can choose to do right. Even if somebody

1 is trying to hurt you, we were always taught to  
2 choose what was right, even if it's going to hurt  
3 you.

4 MR. VILLA: I understand that. Thank you,  
5 Ms. Smith.

6 I'll wait for the microphone, but --  
7 Ms. Liebhart? I think I mispronounced it.

8 MS. LIEBHART: I think you got it right  
9 that time.

10 MR. VILLA: Good.

11 MS. LIEBHART: I disagree with Mrs. Smith  
12 on a couple of counts. I do think even though I've  
13 never spent time in prison or been close to anybody  
14 that has been in prison, I come from a background of  
15 people who were biologists. My father is a  
16 biologist. Humans are in the animal kingdom. That  
17 is how we're organized scientifically. I think that  
18 when people are taken out of their environment and  
19 put in a cage basically and not being able to be  
20 with the people they love, it can reduce them to  
21 their basic impulses, which is sometimes to dominate  
22 people or just do whatever you have to do to  
23 survive. It is -- I think that is part of the  
24 prison culture.

25 MR. VILLA: I think that's an interesting

1 perspective, and I appreciate you sharing that.

2           So along these lines of what I asked  
3 Ms. Smith and what Ms. Liebhart is talking about,  
4 and I know Ms. Duncan touched on it a little bit,  
5 but is there anybody here that, if they heard  
6 evidence that Mr. Perez is a member of a prison  
7 gang, that that would influence whether they thought  
8 he was guilty or not guilty of the crime that the  
9 Government has accused him of that you're going to  
10 hear evidence about in this trial?

11           So I'm going to challenge some of you a  
12 little bit. I know everybody loves to talk in  
13 public.

14           Mr. Bock, I'm just going to pick on you a  
15 little bit, because we haven't heard a lot from you.  
16 So you hear evidence that Mr. Perez is part of a  
17 prison gang. Is that going to influence whether you  
18 think he's guilty of a crime that he's accused of  
19 committing in prison?

20           MR. BOCK: No.

21           MR. VILLA: Why not?

22           MR. BOCK: I think that he should be --  
23 that it should be proven that he did commit the  
24 crimes. Whether he's part of the gang or not, that  
25 doesn't matter. He's here for being accused of

1 crimes, and those should be what the evidence is on.

2 MR. VILLA: Are you going to think about  
3 why he's in the gang or what he may have done as a  
4 part of the gang in the past in other events to help  
5 you decide whether he's guilty in this case or not  
6 guilty?

7 MR. BOCK: No, we all have a past. You  
8 have a past. I have a past. And that's in the  
9 past. We're here to find out if he did do the  
10 crimes that he's being accused of.

11 MR. VILLA: Thank you, Mr. Bock.

12 Did anybody think differently? Anybody  
13 think that might influence my decision?

14 Let's go back a little bit to some of our  
15 hypotheticals. And I want to stay with what Ms.  
16 Bhalla brought up. She was talking about situations  
17 in prison, not the bank robbery, although bank  
18 robberies can be fun.

19 So everybody here in the box, let's just  
20 pretend you're all in a prison gang. Okay? And  
21 everybody over there on the left side, my left side,  
22 is in the same prison gang. Now, let's say that the  
23 folks over there, they decide, they conspire to  
24 commit a murder. Okay? And y'all didn't do that.  
25 You didn't conspire to commit the murder with them.

1 Is anybody going to hold the folks in the box  
2 responsible because members of the same gang  
3 allegedly committed a murder?

4 Now you were sort of asked that question a  
5 little bit in the questionnaire that you guys have.  
6 We have a little bit of different answers, but  
7 nobody is going to hold them a little bit  
8 responsible? Not at all?

9 We've got a hand here. Mr. Phillips.

10 MR. PHILLIPS: Only if there is evidence  
11 to show that they knew about it or conspired with  
12 them.

13 MR. VILLA: Okay. So you said two  
14 different things. You said if they knew about it or  
15 they conspired with them.

16 MR. PHILLIPS: Well, if they conspired.

17 MR. VILLA: And the judge will instruct on  
18 what a conspiracy is. Generally speaking, it's an  
19 agreement to commit a crime. And so I want to ask  
20 you a little bit about that. Is the fact that  
21 somebody knew the crime was going to occur enough  
22 for you to get a conspiracy?

23 MR. PHILLIPS: No.

24 MR. VILLA: Why not?

25 MR. PHILLIPS: Because just because they

1 knew didn't mean they partake in it. Other people  
2 could know that a robbery is going to happen but  
3 maybe not have the time to react to it. Does that  
4 make them guilty? I don't think so.

5 MR. VILLA: Now, we heard some folks -- we  
6 were talking about this a little bit earlier. I  
7 think Mr. Hassell talked about the responsibility to  
8 say something or to try to stop it. So now let's  
9 say everybody here in the box knew that everybody  
10 over here was going to conspire to commit a murder.  
11 They didn't say nothing, they didn't do anything,  
12 they didn't stop it. Are they guilty?

13 MR. PHILLIPS: They also said that was a  
14 moral right.

15 MR. VILLA: I understand. So I want to  
16 ask you a little bit about that. Morals and what  
17 constitutes a conspiracy are two different things.

18 MR. PHILLIPS: Right.

19 MR. VILLA: Right. So even though they  
20 knew and they didn't stop it, if that doesn't  
21 constitute a conspiracy, would you have a problem  
22 voting them not guilty?

23 MR. PHILLIPS: No.

24 MR. VILLA: None at all?

25 MR. PHILLIPS: No.

1 MR. VILLA: Anybody feel differently than  
2 that? Okay. I've got some hands over here.

3 Mr. Brimmer?

4 MR. BRIMMER: Yes, sir.

5 MR. VILLA: Do you feel different?

6 MR. BRIMMER: Yeah. It goes back to kind  
7 of what I said earlier, you know. In my mind, the  
8 sheer fact that they knew and did not act means that  
9 they chose to partake in the conspiracy. If you  
10 don't try to stop it, you're just as bad. You're  
11 not -- if you're not, whether they know, and because  
12 they're apparently part of our same gang, then how  
13 do we know they're not trying to act in the best  
14 interests of that gang?

15 MR. VILLA: So let me ask you about that,  
16 Mr. Brimmer. As I said, the judge will instruct on  
17 the law, and he'll tell you what a conspiracy is.  
18 And if you thought that based on his instruction,  
19 just because they knew and just because they didn't  
20 stop them that that wasn't a conspiracy, right, on  
21 how the judge explains to you what the law is of  
22 conspiracy, are you saying you'd have trouble  
23 following that instruction and voting not guilty?

24 MR. BRIMMER: I very well could, yes. As  
25 I understand it right now, with my meager knowledge



1 of the law, a conspiracy is an agreement and it by  
2 nature requires at least two people involved. If  
3 they know of it or I, as an individual, you know,  
4 tell her, "Hey, I'm going to rob a bank later," and  
5 it's just me and only me, but she knows I'm going to  
6 do anything, I've now brought her into this. She  
7 didn't initially want to be in it, but she now has  
8 some sort of duty to act.

9 MR. VILLA: So she has knowledge, she may  
10 have a moral duty to act, but if you look at the law  
11 of conspiracy as the judge instructs you on it and  
12 you don't think that what she did was a conspiracy,  
13 would you have trouble voting not guilty?

14 MR. BRIMMER: If I don't think it's a  
15 conspiracy, I won't have trouble voting not guilty.  
16 If I believe it's a conspiracy, then I will vote  
17 guilty.

18 MR. VILLA: Fair enough. Even if they're  
19 part of the same prison gang, if you don't think  
20 it's a conspiracy, you won't have a problem voting  
21 not guilty?

22 MR. BRIMMER: No.

23 MR. VILLA: Thank you.

24 I think we had another hand right next to  
25 you. Ms. Yatsattie?

1 MS. YATSATTIE: Yes. It goes back to the  
2 law and things where if you know something is going  
3 on, you're just as liable. Look at child abuse. If  
4 you know it's going on and you don't say anything,  
5 you're just as liable for the action taking place.  
6 So if that's what the law is saying, then that's  
7 correct.

8 MR. VILLA: So if the law on child abuse  
9 says if you know about child abuse and you don't  
10 stop it, you're guilty of abuse, but the law on  
11 conspiracy says different -- and I'm not telling you  
12 what the law is; the judge will; I'm just playing  
13 this hypothetical with you -- says knowledge alone  
14 isn't enough, or knowledge and failure to act isn't  
15 enough, would you still have trouble following that  
16 instruction?

17 MS. YATSATTIE: Yes, because they knew  
18 about it.

19 MR. VILLA: And so even though the judge  
20 gave you the instruction, you'd have a hard time  
21 following it?

22 MS. YATSATTIE: Yeah.

23 MR. VILLA: I appreciate that,  
24 Ms. Yatsattie.

25 Anybody else? Was that just a stretch

1 over there. Oh, Ms. Hournbuckle.

2 MS. HOURNBUCKLE: This may have nothing to  
3 do with what our responsibilities as jurors are, but  
4 when you have a situation where a group of people  
5 are involved, how in the world do you sort out who  
6 did what? Is that just -- that's what their job is  
7 to show us?

8 MR. VILLA: Let me give you a lawyer  
9 answer, which is to ask you a question. So the  
10 question to you is: If the judge gives you  
11 instructions that while you're considering whether  
12 these four men were part of this conspiracy or not,  
13 you have to judge them each individually, and you  
14 have to look at the evidence individually as to each  
15 one, would you be able to do that?

16 MS. HOURNBUCKLE: I would certainly do my  
17 best. I just don't want to mess up and -- I know  
18 there is no way that any of us can make perfect  
19 decisions, so I would do my best.

20 MR. VILLA: And that's what we ask you to  
21 do, and I guess that's what part of this exercise  
22 is, making sure you can do your best. But could you  
23 be fair and impartial to each one of these men  
24 individually in judging whether they're guilty or  
25 not guilty?

1 MS. HOURNBuckle: I think given the tools  
2 that we'll have to work with, I believe so.

3 MR. VILLA: Anybody else think the same?  
4 Think differently? It's sort of one and the same  
5 question, but I wanted to talk to y'all about that.  
6 You know, we are dealing with not just one man on  
7 trial, but four, and you have to look at each one of  
8 them individually, judge the evidence individually,  
9 and decide whether each man is guilty or not guilty  
10 on his own. Does anyone think they're going to have  
11 a problem with that?

12 MS. MONTES: Are they going to do it one  
13 by one?

14 MR. VILLA: Let me wait for the microphone  
15 for you. And that's Ms. Montes.

16 MS. MONTES: Are they going to try them  
17 one by one, or all four at the same time?

18 MR. VILLA: So you're going to hear  
19 evidence in one trial for the next six to eight  
20 weeks and then you're going to be asked to decide,  
21 with instructions from the judge, the guilt or  
22 innocence of each man. So that's the question that  
23 I have: Do you have any trouble doing that?

24 MS. MONTES: I don't know. If it's going  
25 to be four, it's going to be hard to do all four of

1       them at the same time.

2               MR. VILLA: But you could do it?

3               MS. MONTES: I guess.

4               MR. VILLA: That's fair.

5               Let me ask, since I'm over here in the  
6 box, I'm picking on some folks that haven't talked.  
7 I apologize. Ms. Padilla, so we have a couple of  
8 questions in the air, but let's get back to the  
9 prison gang issue. Okay? A group of the prison  
10 gang -- we don't have to use this box and you guys  
11 anymore -- but a group of a prison gang conspires to  
12 commit a crime. Would you hold it against other  
13 members of the prison gang for what their fellow  
14 members did?

15              MS. PADILLA: Well, I would have to hear  
16 all the evidence and see who was involved and who  
17 did what. I couldn't say that it was all of them.  
18 I'd have to weigh out the evidence.

19              MR. VILLA: What if one or more of the men  
20 on trial knew about the conspiracy?

21              MS. PADILLA: Then he's -- well, he's  
22 involved, yes.

23              MR. VILLA: Because he knew about it?

24              MS. PADILLA: Yes.

25              MR. VILLA: Now, if the judge gives you

1 instructions on conspiracy, and conspiracy says an  
2 agreement, do you believe that you could follow that  
3 instruction and decide, well, just because he knew  
4 didn't mean he agreed to do anything, and be okay  
5 voting that man not guilty?

6 MS. PADILLA: If that was the instruction  
7 of the judge, yes.

8 MR. VILLA: You don't think that the fact  
9 that he may be a member of this same gang --

10 MS. PADILLA: Maybe he provided other  
11 information to the case, and really told what really  
12 happened, you know.

13 MR. VILLA: I mean, you can listen to the  
14 evidence?

15 MS. PADILLA: Yes.

16 MR. VILLA: And you don't have a problem  
17 following the judge's instruction when it comes to  
18 conspiracy?

19 MS. PADILLA: No.

20 MR. VILLA: Okay. How about -- I'm sorry?  
21 I didn't mean you cut you off there.

22 Ms. Cator?

23 MS. CATOR: Yes, sir.

24 MR. VILLA: I'll pick on you just a little  
25 bit.

1 MS. CATOR: Sure.

2 MR. VILLA: What do you think of all this?

3 MS. CATOR: I don't believe being in a  
4 group makes somebody guilty by association.

5 MR. VILLA: What if they know about the  
6 crime before it happens?

7 MS. CATOR: I think it depends on the  
8 content and involvement. Part of my job is  
9 assessing patients for suicide risk. Them saying,  
10 "Yes, I've thought about it" doesn't make them a  
11 suicide risk. I need more content, I need more  
12 feasibility, I need more information than just  
13 knowledge of, to be able to act on that. If a  
14 population is at risk, the kids, the elderly, whole  
15 different set of rules.

16 But no, being part of a gang I do not feel  
17 makes somebody guilty or having knowledge of.

18 MR. VILLA: Well, let's say the person has  
19 knowledge and says, "Okay, I'm not going to stop  
20 you."

21 MS. CATOR: Still, people are responsible  
22 for the actions that they take proactively. I  
23 understand that not taking an action is a choice,  
24 but when we're talking about criminal behavior, it  
25 is an active process.

1 MR. VILLA: I'm going to challenge you a  
2 little bit more. Let's say somebody -- this  
3 conspiracy to commit murder takes place in a portion  
4 of the prison, and the individuals who are  
5 committing this conspiracy come into a fellow gang  
6 member's room and say, "We're going to take  
7 something from you so we can use it to kill this  
8 man."

9 "Okay, I'm not going to stop you."

10 MS. CATOR: I still don't consider the  
11 person it was taken from as being an active  
12 participant.

13 MR. VILLA: Even if the person chooses not  
14 to alert the authorities?

15 MS. CATOR: Rationale to alert has  
16 different requirements I believe outside versus  
17 inside a prison. So I don't make that assumption.

18 MR. VILLA: Anybody feel differently? I  
19 added some stuff to the scenario. So --

20 THE COURT: Mr. Villa, why don't we finish  
21 your questions maybe after lunch. Why don't we let  
22 the jury go to lunch and you can explore that after  
23 lunch. Is that all right?

24 MR. VILLA: Yes, Your Honor.

25 THE COURT: Let me say one thing before



1 everything leaves.

2 Different judges do different things, and  
3 I understand that maybe the judges down here in Las  
4 Cruces use numbers. Every jury I've ever picked --  
5 I'm in Albuquerque and I've picked lots of juries,  
6 and I was also a trial lawyer a long time before I  
7 came. We always used names. So that's probably the  
8 reason that maybe the clerk's office said what they  
9 did, is that this is what they do down here in Las  
10 Cruces. But I told you the first day, I told you I  
11 live in the Northeast Heights, I live in  
12 Albuquerque, and most of the trials I do are up  
13 there. So I'm the sole reason that we've used  
14 names. I think it helps us with familiarity, it  
15 helps the lawyers, helps me, helps us all get to  
16 know each other. That's the reason I did it. But  
17 I'm the one that did it. You got some information  
18 from the clerk's office that may be the way the  
19 judges down here do it.

20 All right. Try to be back in an hour.  
21 Remember to stay outside until I bring you back in  
22 and we'll send Ms. Wild out there.

23 All right. Have a good lunch.

24 (The venire panel left the courtroom.)

25 THE COURT: All right. Y'all have a good

1 lunch.

2 MR. VILLA: You too, Judge.

3 (The Court stood in recess.)

4 MS. JACKS: Your Honor, I'm concerned that  
5 the issue I'm dealing with is just going to  
6 continue. It has to do with Mr. Villa's  
7 hypothetical.

8 THE COURT: What's your objection?

9 MS. JACKS: The objections are improper  
10 and referring to evidence that everybody knows we're  
11 arguing is inadmissible against Mr. Sanchez.

12 THE COURT: Mr. Villa, don't argue  
13 evidence that's inadmissible in front of the jury.

14 MR. VILLA: And I'm sorry, what evidence  
15 did I argue that was inadmissible?

16 THE COURT: I don't know. Ms. Jacks has  
17 some problems with your voir dire.

18 MS. JACKS: The hypothetical being close  
19 to the facts of the case.

20 THE COURT: Don't do that.

21 MR. VILLA: Well, which part was  
22 incorrect, Judge?

23 THE COURT: I don't know.

24 MR. VILLA: I just want to understand the  
25 Court's ruling.

1 MS. JACKS: From the specific part about  
2 people at the very end, the specific part about --

3 MR. VILLA: Well, Your Honor, I did pose a  
4 hypothetical, but I don't think I got into any  
5 evidence that would be inadmissible.

6 MS. ARMIJO: Your Honor, we agree with  
7 Ms. Jacks, which would be a first. But we do. We  
8 felt that it was getting too close to the facts, and  
9 he was trying to condition this jury. But he  
10 clearly was talking about specific facts because he  
11 said if somebody went up to you and grabbed an item  
12 and said, and your response was, "Go ahead and take  
13 it." It was something to that effect.

14 MS. JACKS: "Go ahead and take it because  
15 I'm scared," which was directly referencing the  
16 evidence that I've been arguing is inadmissible and  
17 it's highly prejudicial against Mr. Sanchez.

18 THE COURT: Can you avoid that?

19 MR. VILLA: Well, again, Your Honor, I  
20 think the one issue is I think Ms. Apodaca raised  
21 her hand and had the floor in answer to my question.

22 THE COURT: Try to avoid getting into the  
23 facts of the case here. We have made some  
24 determinations of the evidence, so try to avoid  
25 that.

1 MR. VILLA: Yes, Your Honor.

2 (The venire panel entered the courtroom.)

3 THE COURT: Why don't everybody be seated.  
4 I think we're looking for a few more here. We're  
5 short about eight.

6 All right. Let's go back on the record.

7 Mr. Villa, do you wish to continue your  
8 direct voir dire examination on behalf of Mr. Perez?

9 MR. VILLA: I do, Your Honor.

10 THE COURT: Mr. Villa.

11 MR. VILLA: Thank you. Good afternoon,  
12 ladies and gentlemen. I hope everybody had a nice  
13 lunch. I think I'll just pick right up where we  
14 left off. The good news is, we're getting close, so  
15 everybody on the nice, soft, comfortable benches,  
16 hang in there.

17 I think, Ms. Apodaca, you had the floor  
18 and you raised your hand in the response to the  
19 discussion we were having before lunch. So do we  
20 have the microphone for Ms. Apodaca?

21 MS. APODACA: Remind me.

22 MR. VILLA: Sure. I think what we were  
23 talking about is this idea of conspiracy, when you  
24 have a prison gang, and members of the prison gang  
25 commit a conspiracy, and other members know about

1 it, they don't stop it, and we're sort of talking  
2 about the idea of at what point have they reached an  
3 agreement, at what point does it become a conspiracy  
4 for them? And I think that's where you were going  
5 to speak a little bit on that.

6 MS. APODACA: Okay.

7 MR. VILLA: I'm sorry, I think we might  
8 have to push the button. You have to be a DJ too.

9 MS. APODACA: Hello.

10 MR. VILLA: There you go.

11 MS. APODACA: Okay. I just blanked right  
12 there. I'm sorry.

13 MR. VILLA: So let me pose the question to  
14 you this way. If you hear evidence that an  
15 individual is a member of a prison gang and knew  
16 about a conspiracy to commit murder that was going  
17 to be done by other members of the prison gang and  
18 didn't stop it, and it's a close question whether  
19 they agreed to help the conspiracy; right? There is  
20 some disputed evidence, and you have a doubt in your  
21 mind, a reasonable doubt, would you have trouble  
22 voting not guilty?

23 MS. APODACA: Definitely.

24 MR. VILLA: You would have trouble?

25 MS. APODACA: Yes, I would.

1 MR. VILLA: So if it's a close call and  
2 you do have reasonable doubt, you would have trouble  
3 voting not guilty because the person is a member of  
4 the prison gang?

5 MS. APODACA: Not at all. I don't believe  
6 the culture has anything to do with it. I think the  
7 fact that they broke the law is the issue. That's  
8 whether they're in a gang or not. I know it has its  
9 own system of rules and culture, but it still  
10 belongs to the United States, and we still follow  
11 the same government and same rules. So if the law  
12 is broken, to me, it doesn't matter where the law is  
13 broken. If you break the law, you break the law.

14 MR. VILLA: Okay. So the question that I  
15 have is: Can you vote not guilty if you have a  
16 reasonable doubt, even though the person is a member  
17 of the prison gang, knew about the conspiracy,  
18 didn't stop it, had some -- whatever the Government  
19 said it is, if it's a close call but you have a  
20 reasonable doubt, can you vote not guilty?

21 MS. APODACA: I think the problem I have  
22 with your statement is that you said that if there  
23 was a reasonable doubt, but they did commit it;  
24 right?

25 MR. VILLA: No, I'm not saying that. I'm

1 saying: You're back in the jury room and you're  
2 considering the evidence, and it's a close call, but  
3 you have a reasonable doubt. Can you still vote not  
4 guilty knowing that this individual for whom you  
5 have a reasonable doubt is a member of this prison  
6 gang and knew about the conspiracy?

7 MS. APODACA: Knew about the conspiracy.  
8 That's what's throwing me off. If they knew about  
9 the conspiracy, then that's breaking the law, so --

10 MR. VILLA: Okay. If you thought that the  
11 judge's instruction on what constitutes a conspiracy  
12 did not include knowledge of it, all right, so you  
13 read the judge's instruction on conspiracy and you  
14 understand what the law is after you read the  
15 judge's instruction; right? We all have to do that.  
16 And you heard the Government's evidence, and it's a  
17 close case, but you have a reasonable doubt about  
18 this particular individual.

19 MS. APODACA: If I have a reasonable  
20 doubt, then I have to go and vote not guilty, if  
21 that's the case. But if it was proven or if there  
22 is somehow evidence showing that the person was  
23 involved, then they were involved.

24 MR. VILLA: And when I say that, meaning  
25 involved as the judge defines what conspiracy is?

1 MS. APODACA: Okay.

2 MR. VILLA: Can you live with that?

3 MS. APODACA: Yes, I can.

4 MR. VILLA: Can you follow the judge's  
5 instructions?

6 MS. APODACA: I'm good with instructions.

7 MR. VILLA: I mean, it's okay if you  
8 can't. It's not illegal to say, "You know what? He  
9 was in the gang, he knew about it, there is some  
10 evidence on one side, and there is some evidence on  
11 the other side, but I've got a doubt, and I'm still  
12 going to have trouble voting not guilty."

13 It's okay to say that. And I understand  
14 you're saying you can vote not guilty.

15 MS. APODACA: If there's a reasonable  
16 doubt.

17 MR. VILLA: Great. So since I have you,  
18 let me just do a little bit of follow-up on some  
19 questions you were asked by Ms. Bhalla about  
20 potential fear or fear of your verdict if you voted  
21 guilty, would you be afraid. And the question I  
22 want to ask you is: Do you think that would  
23 influence -- this fear would influence your  
24 decision-making when you're trying to reach a  
25 verdict?



1 MS. APODACA: God, I hope not.

2 MR. VILLA: So I have to push you a little  
3 bit. Can you promise 100 percent that you can set  
4 that aside and just decide on the facts of the case  
5 guilt or innocence without regard to this potential  
6 fear that we've talked about?

7 MS. APODACA: This potential fear is very  
8 great.

9 MR. VILLA: So you would have a hard time  
10 in the jury room deliberating because of that fear?

11 MS. APODACA: I'm a very logical person.  
12 I can look at the data. I can analyze it. I can  
13 extrapolate from that my determination, but that's  
14 kind of hanging over my head.

15 MR. VILLA: Do you think it might come  
16 into play when you're making your decision?

17 MS. APODACA: I don't want to say that  
18 it's going to skew my decision, but I'm scared of  
19 the ramifications of my decision.

20 MR. VILLA: When you say you don't want to  
21 say it would skew your decision, is it fair for me  
22 to interpret that that you cannot promise 100  
23 percent that it won't skew your decision?

24 MS. APODACA: I cannot say that at this  
25 time.

1 MR. VILLA: I appreciate that. Now, I  
2 think you also raised your hand when we were talking  
3 about juror numbers versus juror names, and you  
4 heard what Judge Browning said before we went to  
5 lunch. So I guess what I want to find out from you  
6 is: Knowing that Judge Brown's practice in all of  
7 his cases is to use names and perhaps the clerk down  
8 here in Las Cruces, since Judge Browning is up in  
9 Albuquerque, uses numbers, does that change the way  
10 you feel about the fact that we're using names and  
11 not numbers?

12 MS. APODACA: If that's standard practice,  
13 it's standard practice. It's not changing the way I  
14 feel. I still feel the way I feel.

15 MR. VILLA: When you were told about using  
16 your numbers instead of using your names, what were  
17 you told?

18 MS. APODACA: I was -- we were in a group,  
19 and we were told that we were given a number because  
20 it was for safety and that way, others wouldn't know  
21 our names.

22 MR. VILLA: I see. Okay. And that's part  
23 of the reason you feel the way you do?

24 MS. APODACA: That started this anxiety  
25 roller coaster I'm on, yeah.

1 MR. VILLA: Thank you, Ms. Apodaca.  
2 There were some other hands before we went  
3 to lunch, so I didn't want to skip anyone.  
4 Mr. McNair, did you raise your hand?  
5 MR. McNAIR: No.  
6 MR. VILLA: Here we go. I apologize.  
7 MS. GOTHARD: Gothard.  
8 MR. VILLA: Thank you, Ms. Gothard.  
9 MS. GOTHARD: I just want to clarify. You  
10 keep saying "conspiracy versus knowledge." So in  
11 my -- what I'm feeling is that if it's a conspiracy,  
12 it's agreement. If it's just they know but they  
13 never necessarily agreed, is that what you're -- is  
14 that kind of -- am I right in that?  
15 MR. VILLA: Well, let me see if I can --  
16 sometimes I don't ask very good questions. So let  
17 me see if I can try this.  
18 MS. GOTHARD: Okay.  
19 MR. VILLA: Let's say you hear the  
20 evidence, and the evidence is somewhere between  
21 knowledge and agreement. Okay? So you sit here for  
22 six weeks or so, hopefully shorter, and you hear the  
23 evidence, and the evidence is somewhere in between.  
24 And so you get back into the jury room and  
25 you've got doubt. You've got a reasonable doubt.

1 And you talk to your fellow jurors, everybody is  
2 thinking about these issues, but ultimately you have  
3 a reasonable doubt.

4 The question that I have for you is: If  
5 we're in that territory where it's close, it's  
6 between knowledge and agreement, right, and you have  
7 to look at the judge's instruction on the law.

8 MS. GOTHARD: Exactly.

9 MR. VILLA: I just get to argue. He tells  
10 you what the law is.

11 MS. GOTHARD: Right.

12 MR. VILLA: Can you vote not guilty,  
13 knowing that this individual -- or believing that  
14 this individual was a member of a prison gang?

15 MS. GOTHARD: Okay.

16 A. Yes, but -- I mean, yes, I could vote not  
17 guilty. I was just clarifying the whole conspiracy.  
18 Because you keep saying, you know, they knew or they  
19 agreed, and those are two different things. I mean,  
20 I can know something and not be guilty of it. But  
21 if I agree to something, then I feel like I would be  
22 guilty of that. Does that make any sense?

23 MR. VILLA: No, I understand that.

24 MS. GOTHARD: Okay. I just wanted to  
25 clarify that I was understanding that correctly.

1 And then back to, you know, with the fear, I don't  
2 necessarily have a fear. But I am going to be  
3 honest and say that I have some anxiety in the fact  
4 that these men's lives are in my hands, in our  
5 hands. And to know that this decision that we're  
6 making -- you know what I mean? It ultimately  
7 decides their fate, and it does give me some  
8 anxiety, honestly.

9 MR. VILLA: Do you think that that anxiety  
10 is going to come into play when you're deliberating?  
11 Let me tell you that the judge is going to give you  
12 some instructions. He's going to give you a lot of  
13 instructions. And one of those instructions is  
14 going to be to not be concerned with the  
15 consequences of your verdict. So whether it's not  
16 guilty, guilty, you know, we heard both sides of  
17 this coin.

18 MS. GOTHARD: Right.

19 MR. VILLA: Do you think that you could  
20 follow that instruction and not let the anxiety  
21 affect your decision-making?

22 MS. GOTHARD: I can definitely try, yes.

23 MR. VILLA: And there is no question it's  
24 going to be -- there's going to be anxiety when  
25 you're making the decision, but I guess what I have

1 to ask you is: Can you try hard enough to make sure  
2 that it does not affect your ability to vote the way  
3 you should vote based solely on the evidence that  
4 you hear in court?

5 MS. GOTHARD: Definitely. Yeah, I mean, I  
6 would definitely look at the evidence only.

7 MR. VILLA: Okay. So unless there is  
8 someone else that wanted to talk that I skipped --  
9 oh, someone in the back. I always grab the wrong  
10 one. Ms. Winston.

11 MS. WINSTON: Yes. Hello. I wanted to  
12 talk about the anxiety.

13 MR. VILLA: Sure.

14 MS. WINSTON: I have been called to jury  
15 duty a couple of times in my past, and I was put in  
16 a pool but never put in a panel to be chosen, so I'm  
17 not familiar with the process. The names and the  
18 numbers don't really -- I understand that when I  
19 turned in that questionnaire, it was going to go to  
20 the legal counsel and to the judge and to the Court.  
21 But I didn't realize that the people that were on  
22 trial were going to be here hearing our personal  
23 information and gain personal identifiable  
24 information about each and every one of us, where we  
25 live and what we do. So that's where my anxiety

1 comes from.

2 MR. VILLA: Do you think that you would be  
3 afraid, for instance, if you in your  
4 decision-making, voting guilty or not guilty, this  
5 anxiety, this fear that you were talking about would  
6 affect your ability to make that decision?

7 MS. WINSTON: I would be honest, and so  
8 that's not the issue. But the retaliation fears are  
9 very real in there.

10 MR. VILLA: So the fear of retaliation  
11 would be -- let me see if I understand this right --  
12 would be fear that if you voted any one of these men  
13 guilty, that somebody might retaliate against you?

14 MS. WINSTON: Yes.

15 MR. VILLA: So I guess the question I have  
16 is: When you're making that decision, right, and  
17 you're making the decision to vote guilty or not  
18 guilty, is that fear going to come into play and  
19 affect your decision-making?

20 MS. WINSTON: Probably.

21 MR. VILLA: All right. I appreciate your  
22 answer.

23 Does anybody else share those same  
24 feelings?

25 Okay. We have Mr. Baxa?

1 MR. BAXA: Yes.

2 MR. VILLA: Go ahead.

3 MR. BAXA: I guess I just wholeheartedly  
4 agree. Like I said, I believe these men to be  
5 innocent. But if I were selected on the jury and we  
6 were coming to the decision that we believed they're  
7 guilty, I would feel anxiety over the fact that  
8 there may be repercussions, they may retaliate. And  
9 I mean -- because going on a last-name basis is all  
10 fine and good for people with the last name of Smith  
11 or Padilla. That's a common name. But I've got a  
12 Czechoslovakian last name. You don't have too many  
13 Baxas rolling around in the desert. It's a little  
14 stressful to have that information out. If it was  
15 just confusion -- I didn't even know that  
16 information. I was just, like, I was given the  
17 Cliffs Notes. I didn't get the full orientation. I  
18 didn't find out my number until this morning. So to  
19 find out that, you know -- the information that we  
20 weren't supposed to use our last names is just a  
21 little stressful to know that. Like I said, I put  
22 my information out here and now the people in this  
23 room know my thoughts and they know my name and they  
24 know what I look like and that's something that I  
25 would prefer not to have done.



1 But we're past that point, so my point is  
2 that I feel like it would affect my decision, my  
3 thinking, for coming to the point where we believe  
4 that they're guilty. I would feel hesitation, like  
5 I said, because of either retaliation or  
6 repercussion of that decision of voting guilty.

7 MR. VILLA: You wouldn't be able to set  
8 that aside?

9 MR. BAXA: I mean, I think it comes down  
10 to a subconscious base primal fear of just  
11 self-preservation. I know, like, they're not just  
12 running at me with a knife right now or anything  
13 like that, because I believe them to be innocent.  
14 But if it was coming down to that, I would feel  
15 anxiety, I would feel fear, like, you know, would  
16 something happen? Of course, if there was, like, a  
17 threat placed towards us, obviously, that's  
18 something that would -- that's a different, you  
19 know, can of worms altogether. But just having the  
20 anxiety of maybe something could happen is something  
21 that I see.

22 MR. VILLA: If the judge gives you an  
23 instruction that says to set that aside and just  
24 make your decision, not guilty or guilty, based on  
25 the evidence and based on whether you have a

1 reasonable doubt, can you make that decision and not  
2 let this anxiety or fear affect it?

3 MR. BAXA: If you're asking for a  
4 percentage, I can't give you 100% on that.

5 MR. VILLA: So you think it might be a  
6 problem?

7 MR. BAXA: It may be, yes.

8 MR. VILLA: I appreciate that.

9 MR. BAXA: And I'm sorry I can't be  
10 more -- I can't give that 100%. I'm sorry about  
11 that.

12 MR. VILLA: You don't have to apologize.  
13 Nobody here in this room has to.

14 Is there anyone else that feels the same  
15 way?

16 Okay. So let me just get the hand.  
17 Ms. Tighe? And I think you spoke about that  
18 already, but you feel the same way as Mr. Baxa?

19 MS. TIGHE: I do.

20 MR. VILLA: And for the record, the answer  
21 was yes, she does.

22 Then I think we had Mr. Fink, and I think  
23 you spoke to us a little bit already, but we'll let  
24 you answer on the mic.

25 MR. FINK: I don't really have anything to

1 add. It's just that I feel the same way. It's not  
2 just the names. It's all the personal information  
3 that we revealed.

4 MR. VILLA: So you feel like you can't  
5 decide based on the evidence and the judge's  
6 instruction on the law; that that fear would affect  
7 your ability?

8 MR. FINK: Right now I do feel that way.

9 MR. VILLA: Okay. Thank you, Mr. Fink.

10 MR. FINK: I don't feel good about feeling  
11 that way.

12 MR. VILLA: Don't apologize. That's okay.  
13 Anybody else? I think --

14 MS. WOJCIK: I don't have anything to add.

15 MR. VILLA: Just a second. Just for  
16 the -- because the acoustics aren't good across the  
17 room. Ms. Wojcik, did I say that right?

18 MS. WOJCIK: Mrs. Yes.

19 MR. VILLA: Mrs. Wojcik. I apologize. Go  
20 ahead.

21 MS. WOJCIK: I don't have anything to add.  
22 I would concur. I feel strongly that I would make  
23 whatever choice I need to make. I don't think it  
24 would affect that choice, but I definitely have  
25 anxiety. Just thought I'd let y'all know.

1 MR. VILLA: You're allowed to have  
2 anxiety. But the question I have for you is: Will  
3 that affect your decision-making or will it not?

4 MS. WOJCIK: Well, I would hope not.

5 MR. VILLA: Okay. And I'm not going to  
6 ask --

7 MS. WOJCIK: But I'm anxious about whether  
8 or not it might.

9 MR. VILLA: Okay. And can I ask what side  
10 are you on? Mr. Baxa talked a little bit about fear  
11 of retaliation for a guilty verdict. We heard  
12 others talking about, well, I have these men's lives  
13 in my hands, and making the wrong decision. So can  
14 I ask you where you fall?

15 MS. WOJCIK: I think it's a little of  
16 both.

17 MR. VILLA: Okay. Do you think that you  
18 could follow the judge's instructions and put that  
19 anxiety aside? I mean, it's going to be stressful.  
20 I don't know that there is any jury trial anywhere  
21 when you get back and make a decision that it's  
22 just, you know, roses and unicorns.

23 MS. WOJCIK: Well, I know that I will, but  
24 I'm not feeling good about it so...

25 MR. VILLA: I appreciate that,

1 Mrs. Wojcik.

2 Anybody else? Okay. We have -- is it  
3 Ms. Harris?

4 MS. HARRIS: Yes.

5 MR. VILLA: All right.

6 MS. HARRIS: I guess I would just say I  
7 don't think that it would affect my decision, but  
8 the thoughts of any kind of coercion, you know,  
9 being approached by anyone not in this room, but  
10 maybe involved, you know, finding me and coercing me  
11 in a decision. I guess that thought has crossed my  
12 mind and created anxiety.

13 MR. VILLA: You don't mean coercion like  
14 my closing argument?

15 MS. HARRIS: No.

16 MR. VILLA: I get it.

17 MS. HARRIS: Somebody twisting your arm to  
18 do something.

19 MR. VILLA: I might twist it a little bit  
20 in closing argument. The judge is going to give you  
21 some instructions on that, and he's going to tell  
22 you that if anything like that happens, what to do  
23 and how to report it and that sort of thing. So  
24 there are procedures in place.

25 MS. HARRIS: Okay.

1 MR. VILLA: Okay? Let me ask, just  
2 because you got the mic right there and I haven't  
3 gotten to talk to Mr. Graves a whole lot, do you  
4 mind passing the microphone back to him?

5 I'm sorry to pick on you, Mr. Graves. Do  
6 you have any concerns about fear, anxiety, when you  
7 make a decision on the verdict in this case?

8 MR. GRAVES: No, sir.

9 MR. VILLA: And let me pose to you the  
10 question that I was posing a little bit earlier.  
11 We've got alleged members of the prison gang, one  
12 group conspires to commit a murder. Somebody else  
13 has knowledge of it, and somewhere between knowledge  
14 and agreement -- I don't want to get into all the  
15 evidence, okay -- but you hear the evidence, one  
16 side, then the other, and you've got a reasonable  
17 doubt about whether this individual agreed to commit  
18 a murder. Are you going to have any trouble voting  
19 not guilty because you think that individual is a  
20 member of the same prison gang?

21 MR. GRAVES: No.

22 MR. VILLA: Why not?

23 MR. GRAVES: I guess what it comes down to  
24 is, it's you guys' job to present the evidence.  
25 It's not my -- it's my position to look at that

1 evidence and make a decision. And beyond that, I  
2 have no emotional attachment, I guess, to that.

3 MR. VILLA: All right. I appreciate that,  
4 Mr. Graves.

5 Anybody else feel different?

6 Ms. Liebhart?

7 MS. LIEBHART: I actually wouldn't have an  
8 issue with declaring a not guilty verdict, or  
9 guilty, depending on what was presented in court or  
10 I don't have anxiety. I actually had a question.  
11 Do the clients have -- everybody in here, do they  
12 have all of their personal information, or is it  
13 just their names?

14 MR. VILLA: Well, so the information --  
15 and the Court can give you some guidance on this --  
16 but the information, the materials we fill out that  
17 the Court asked you to fill out, the attorneys get  
18 that information. Of course, we've all sat here in  
19 court, and so that's the extent of knowledge that  
20 everybody has and any member of the public has is  
21 what's been produced here in court. The  
22 questionnaires went to just the Court and the  
23 attorneys. I don't know if that answers your  
24 question.

25 MS. LIEBHART: So that implies that the

1 clients also have all that information?

2 MR. VILLA: Well, the attorneys have the  
3 information.

4 MS. LIEBHART: Okay. Okay.

5 MR. VILLA: So let me talk about a little  
6 bit different subject. It's been touched on a  
7 little bit in your questionnaires, but the right to  
8 remain silent. So the Fifth Amendment says that  
9 anybody on trial has the right to remain silent.  
10 They have the right not to testify. And y'all were  
11 asked a little bit about that in your jury  
12 questionnaire, but I want to pose the question in  
13 the same way that I've been posing this question  
14 about conspiracy. If you've got a situation where  
15 it's a close call, and the evidence is right there  
16 on both sides, you're not sure, you've got some  
17 doubt in your mind, and any one of these defendants  
18 makes a decision not to testify, is there anybody  
19 here that would hold that against them? Anybody  
20 here that that might sway them a little bit on this  
21 close case and whether there is reasonable doubt or  
22 not?

23 Sorry. In the back. Mr. Burton?

24 MR. BURTON: Yes.

25 MR. VILLA: Go ahead, sir.



1 MR. BURTON: I kind of agree. I think it  
2 was said yesterday that if you're innocent, I don't  
3 see where -- the fear in taking the stand. I  
4 understand what their right is, and I understand  
5 what my rights are, too. But I would kind of look  
6 at that in a negative way.

7 MR. VILLA: Let me pose the question again  
8 to you specifically. You'd look at it negatively,  
9 but would it come into play in deciding whether  
10 there's reasonable doubt or not?

11 MR. BURTON: Potentially, yes.

12 MR. VILLA: So it might?

13 MR. BURTON: It absolutely would,  
14 probably.

15 MR. VILLA: Thank you, Mr. Burton.

16 Anybody else feel the same way? Oh, I'm  
17 sorry. Up here in the jury box. We'll wait for the  
18 microphone unless you want to yell really loud.  
19 Ms. Decramer.

20 MS. DECRAMER: I understand that it's  
21 their right not to speak, they can remain silent.  
22 But if the evidence is that close, why wouldn't they  
23 want to take the stand in order to sway the jury in  
24 their direction, rather than leave it up to us to  
25 decide them?

1 MR. VILLA: I think that's a fair  
2 question, and I'll answer it again with a question,  
3 like attorneys do. If that's the case and you're  
4 thinking that way, but any of these defendants  
5 decides not take a stand, and Judge Browning  
6 instructs you you can't let that come into  
7 consideration; you feel that way, but you can't let  
8 it sway you. If you have reasonable doubt, you've  
9 got to vote not guilty. Are you going to be able to  
10 follow that instruction?

11 MS. DECRAMER: I probably could, although  
12 it's always going to be in the back of my mind: Why  
13 didn't they testify themselves?

14 MR. VILLA: So is it fair for me to  
15 suggest that maybe you'd have a little trouble with  
16 that?

17 MS. DECRAMER: I probably would.

18 MR. VILLA: So you might not vote not  
19 guilty, even with that reasonable doubt in mind? Is  
20 that yes?

21 MS. DECRAMER: Yes.

22 MR. VILLA: Let me just ask this. We're  
23 close here.

24 Ms. Taylor?

25 MS. TAYLOR: Yes.

1 MR. VILLA: I'm going to pick on you a  
2 little bit. We'll wait for you to get the mic.

3 MS. TAYLOR: Yes, sir.

4 MR. VILLA: Ms. Taylor, the same question.  
5 What would you answer?

6 MS. TAYLOR: It's got to be black or  
7 white.

8 MR. VILLA: What do you mean by that?

9 MS. TAYLOR: One hundred percent done by  
10 the Government to prove it. If it's not proven,  
11 it's not done.

12 MR. VILLA: Regardless of what the  
13 evidence is?

14 MS. TAYLOR: Yes.

15 MR. VILLA: So if any one of the  
16 defendants chooses not to testify, you're not going  
17 to hold that against them?

18 MS. TAYLOR: No, no.

19 MR. VILLA: Thank you. Well, let me ask  
20 you why.

21 MS. TAYLOR: It's your right.

22 MR. VILLA: Okay.

23 Anybody else think different than that?

24 And I have -- sorry, Mr. Graves. I just  
25 wanted to pick on you because it's on the same

1 subject matter. In your special questionnaire,  
2 there was a question about this, and you left it  
3 blank. So I just wanted to ask you what your  
4 opinion was about this.

5 MR. GRAVES: About what?

6 MR. VILLA: The right to remain silent.

7 MR. GRAVES: It's everybody's right. I  
8 don't think it would sway my opinion either way.

9 MR. VILLA: And I know when I fill out  
10 questionnaires, I often just skip some on accident.  
11 Did you skip this one for a reason, or just an  
12 accident?

13 MR. GRAVES: I -- you know, I would feel  
14 it was just an accident.

15 MR. VILLA: So if a defendant chooses not  
16 to testify, regardless of what the evidence is,  
17 you're not going to hold that against him?

18 MR. GRAVES: No.

19 MR. VILLA: Let me ask Ms. Gonzalez.  
20 There is also a Miss Gonzalez.

21 THE COURT: Are you about to wrap up, Mr.  
22 Villa?

23 MR. VILLA: Yes, Your Honor. This is my  
24 last line.

25 Ms. Gonzalez, in your questionnaire, you

1 put that you weren't sure about the right to remain  
2 silent.

3 MS. GONZALEZ: I didn't quite understand  
4 what you meant by that. But now that I've listened  
5 to what you all are talking about, I understand.  
6 And like I believe that everybody has their right.  
7 If the defendants don't want to speak, that's their  
8 right.

9 MR. VILLA: And you wouldn't hold it  
10 against them in deciding guilty or not guilty?

11 MS. GONZALEZ: No.

12 MR. VILLA: All right. Thank you,  
13 Ms. Gonzalez.

14 Your Honor, I just have a couple of  
15 follow-ups and I'll be done. Actually, Your Honor,  
16 they've all been covered, so that's the conclusion.

17 THE COURT: All right. Thank you, Mr.  
18 Villa.

19 All right, Mr. Jewkes, do you have  
20 additional direct voir dire you wish to conduct on  
21 behalf of Mr. Sanchez?

22 MR. JEWKES: I do. Thank you, Your Honor.

23 THE COURT: Mr. Jewkes.

24 MR. JEWKES: May it please the Court.

25 THE COURT: Mr. Jewkes.

1 MR. JEWKES: Ladies and gentlemen,  
2 yesterday we went through the introductory stage, so  
3 once again, let me tell you about our team. My name  
4 is Richard Jewkes. My office is in El Paso, Texas.  
5 I've been practicing law too long. The lady that's  
6 about to stand up is Amy Jacks. She's from Los  
7 Angeles, California. The gentleman next to her is  
8 our client, Daniel Sanchez. And next to Mr. Sanchez  
9 is Cynthia Gilbert, who is a paralegal, a legal  
10 specialist from Albuquerque, New Mexico.

11 The first question: How many of you are  
12 tired of this process? Let me see a show of hands.  
13 My God, it's unanimous.

14 How many of you are tired of listening to  
15 lawyers? Let me see your hands. No guts, no glory.  
16 Be honest, people.

17 Okay. I'm going to try to make this as  
18 short as possible. I only have three or four  
19 questions because we have plowed a lot of ground in  
20 the last two days. And let's see. Virtually all of  
21 you are sitting on wooden bench seats. I can just  
22 imagine. Could you give the microphone to number  
23 42, please?

24 Mr. Youngblood. Good afternoon,  
25 Mr. Youngblood.

1 MR. YOUNGBLOOD: Sir.

2 MR. JEWKES: You are a businessman from  
3 Hobbs; right?

4 MR. YOUNGBLOOD: Correct.

5 MR. JEWKES: Do you know that you have a  
6 dead stone-cold look-a-like right here in Las  
7 Cruces?

8 MR. YOUNGBLOOD: No, sir, did not know  
9 that.

10 MR. JEWKES: Didn't know that. Got the  
11 same last name as you.

12 MR. YOUNGBLOOD: Oh, really?

13 MR. JEWKES: Bob Youngblood. No relation?

14 MR. YOUNGBLOOD: Probably somewhere. They  
15 say all the Youngbloods are related. In the U.S.  
16 there's only like 7,600 of us.

17 MR. JEWKES: We'll let that go. I mean,  
18 when I saw you walk into the courthouse yesterday  
19 morning, I actually thought I was looking at Bob.  
20 But you've never heard of him?

21 MR. YOUNGBLOOD: No, sir, never have.  
22 Like to meet him, though.

23 MR. JEWKES: Beg your pardon?

24 MR. YOUNGBLOOD: I'd like to meet him,  
25 though.

1 MR. JEWKES: Maybe you will.

2 Okay. Mr. Youngblood, do you believe that  
3 an inmate serving a prison term has the right to  
4 protect himself?

5 MR. YOUNGBLOOD: Yes.

6 MR. JEWKES: Why do you think that?

7 MR. YOUNGBLOOD: Everybody has a right to  
8 protect themselves, no matter where they are, no  
9 matter what they're doing.

10 MR. JEWKES: Regardless of where?

11 MR. YOUNGBLOOD: Regardless of where  
12 they're at.

13 MR. JEWKES: Because you have a right to  
14 protect yourself; right?

15 MR. YOUNGBLOOD: Yes, sir.

16 MR. JEWKES: Anybody disagree with  
17 Mr. Youngblood as far as the right to protect  
18 oneself? I take it by your silence that's not the  
19 case.

20 How about the right to arm oneself? Okay,  
21 we see one hand, and I don't have my glasses on.  
22 Once again, your number?

23 MR. BRIMMER: 32.

24 MR. JEWKES: We've learned to know each  
25 other the last couple of days.



1 MR. BRIMMER: I think that as far as the  
2 right to arm yourself for self-defense purposes, it  
3 goes as far as the extent of the law or rules in the  
4 facility where you happen to be are. In the case of  
5 anyone in the prison, it basically comes down to  
6 just your fists, you know, what's naturally attached  
7 to your body, for very obvious reasons. I've worked  
8 in a very secure facility before, and when worse  
9 came to worst, we would be armed up. But beyond  
10 that, we weren't allowed to have any real weapons on  
11 us.

12 MR. JEWKES: Where was that, sir?

13 MR. BRIMMER: I worked in a facility at  
14 Kirtland.

15 MR. JEWKES: On base?

16 MR. BRIMMER: Yes. Even on base, you're  
17 only allowed to have certain weapons at certain  
18 times. So I believe you have the right to arm  
19 yourself to the extent that the law or what passes  
20 for the law where you are allows. I don't think if  
21 you think, well, the rules say I can't have a knife,  
22 but I'm going to fashion a knife to protect myself  
23 from Joe Jack over here, I think that you're still  
24 in the wrong in that case.

25 MR. JEWKES: And would you carry that

1 belief with you into the jury room, sir?

2 MR. BRIMMER: I would, yes.

3 MR. JEWKES: You would?

4 MR. BRIMMER: I would.

5 MR. JEWKES: Would not?

6 MR. BRIMMER: Would.

7 MR. JEWKES: Would?

8 MR. BRIMMER: Yes.

9 MR. JEWKES: Affirmative?

10 MR. BRIMMER: Affirmative.

11 MR. JEWKES: Anyone feel like that  
12 gentleman? You, sir, number?

13 MR. HASSELL: 25.

14 MR. JEWKES: I'd better put my glasses on.

15 MR. HASSELL: I'll put mine on, too.

16 MR. JEWKES: It's a dual.

17 MR. HASSELL: Now we see eye to eye.

18 MR. JEWKES: I like your style,

19 Mr. Hassell.

20 MR. HASSELL: Yes, sir.

21 MR. JEWKES: Tell me about it.

22 MR. HASSELL: Well, if you're in prison,  
23 you've given up your right to arm yourself. You're  
24 there as a guest, so to speak, and I think that your  
25 safety is the responsibility of those people who are

1 overseeing you. You don't have a right to arm  
2 yourself. You have a right to protect yourself, but  
3 that doesn't mean by fashioning a weapon and hurting  
4 someone. It means by talking to whoever is in  
5 charge or defending yourself with whatever you have  
6 at your disposal, which probably shouldn't be a  
7 weapon, because there shouldn't be weapons in  
8 prison.

9 MR. JEWKES: What about those prison  
10 officials that don't have eyes in the back of their  
11 head or are greatly outnumbered? In other words,  
12 can't see everything at all times? Does that make a  
13 difference or not?

14 MR. HASSELL: No, that's the system. It's  
15 not a perfect system. There shouldn't be gangs in  
16 prison. It should be a safe place for people. If  
17 the system worked right, we wouldn't have this  
18 discussion, in my eyes.

19 MR. JEWKES: Who else agrees? Anybody  
20 else. Number?

21 MS. MONTES: Montes. I believe that if my  
22 life was in danger, I would protect myself with  
23 whatever, because this is my life. And you're not  
24 going to give me my life back if they hurt me. So I  
25 would defend myself with whatever. That's what I

1 believe. If my life is in danger and I know my life  
2 is in danger, I'm going to defend myself.

3 MR. JEWKES: Is that because that's human  
4 nature?

5 MS. MONTES: Yeah, I think so, because  
6 tell me, who wants to die? I mean, you want to  
7 defend yourself.

8 MR. JEWKES: Do you think it's inbred in  
9 us?

10 MS. MONTES: What?

11 MR. JEWKES: Inbred in us. Is that part  
12 of human nature?

13 MS. MONTES: I think so. I mean, if you  
14 feel you're in danger, I know you're going to  
15 protect yourself any way you can. That's the way I  
16 feel. Because I'm going to defend myself. I don't  
17 care who it is. If my life is in danger, I'm going  
18 to defend myself. I have a family to take care of.  
19 I have kids. I have grandkids. I want to save my  
20 life. It's my life or it's your life. And like you  
21 said, I don't have eyes behind my back.

22 MR. JEWKES: Survival, isn't it?

23 MS. MONTES: That's my beliefs. I'm  
24 sorry, but those are my beliefs. I'm going to  
25 defend myself.

1 MR. JEWKES: Yes, ma'am. I believe you.

2 MS. MONTES: I might not win. I might  
3 still get killed, but I'm going to try my best.

4 MR. JEWKES: Who else has something to say  
5 on that subject, something you'd like to say?

6 This is going to be Diane Moore, Number 1.  
7 No, excuse me, Norah Harris. Ms. Decramer. I'm  
8 sorry.

9 MS. DECRAMER: I feel that everybody has a  
10 right to defend themselves. If you want to carry a  
11 weapon, get a license to carry a weapon, whether  
12 it's concealed or not. When you're in prison,  
13 you've broken the law because you're in prison.  
14 Because you're in prison, you broke the law because  
15 you're in prison. You have a right to defend  
16 yourself in prison, but by fashioning a weapon in  
17 that respect, you are now breaking the law again,  
18 because you're not allowed to have a weapon in  
19 prison. So defending yourself is going to have to  
20 be with your two hands. I don't feel it would be  
21 legal for them to fashion a weapon to protect  
22 themselves. You're breaking the law all over again.

23 MR. JEWKES: All right. Let's talk about  
24 protecting yourself with your hands. How do you  
25 feel about that?

1 MS. DECRAMER: Well, if that's all you've  
2 got, that's what you have.

3 MR. JEWKES: And you're okay with that;  
4 right?

5 MS. DECRAMER: Um-hum.

6 MR. JEWKES: Anyone disagree with that?  
7 You agree?

8 VENIRE PANEL MEMBER: I disagree because  
9 like they're going to attack you and you see a knife  
10 on the side and you don't have your knife, you're  
11 going to grab it and try to defend yourself. A lot  
12 of times they could have gone to prison for a DWI,  
13 not for murder or drugs. Because a lot of people go  
14 to prison for little things like DWIs or like  
15 there's other people in prison for child -- what do  
16 you call it -- penetration to a minor, because  
17 little girls say they're 18 but they're really 15  
18 but they look 18. There are a lot of people for  
19 that, too, but you don't know what you're in prison  
20 for.

21 And like, for instance, she's got this in  
22 the back and then I see a fork, and then that other  
23 one jumps in, I'm going to pick up that fork and I'm  
24 going to start defending myself because there's two  
25 of them against me. Yeah, I'll use my hands if it's

1 only like one-on-one and she don't have nothing.  
2 That's going to mean a fight. But when somebody has  
3 weapons and stuff, you're going to have to find  
4 something if there's something around.

5 MR. JEWKES: All right, ma'am.

6 Let's see. We have some folks over here  
7 that want to respond to that. This gentleman.  
8 Number, please?

9 MR. RODRIGUEZ: 30.

10 MR. JEWKES: Number 30. Yes, sir.

11 MR. RODRIGUEZ: If your life was in danger  
12 and your opponent had a bigger weapon, deadly  
13 weapon, than you do, you will most likely, in the  
14 order of survival, look for something similar or  
15 bigger than his or hers. So we have an issue where  
16 people arm themselves to protect themselves. And in  
17 normal society, that's our culture and I don't think  
18 it would be any different in prison, and from my  
19 experience, it hasn't been. People, when their  
20 lives are in danger, they will use many things to  
21 defend themselves and to have one leg up on the  
22 other guy or gal with a bigger weapon and a deadlier  
23 weapon than you do. It's just reality, in my  
24 experience.

25 MR. JEWKES: Once again, human nature?

1 Yes or no?

2 MR. RODRIGUEZ: I believe so.

3 MR. JEWKES: Who else would like to  
4 respond? Yes, sir?

5 MR. BRIMMER: 32 again. I just wanted to  
6 clarify. When we're talking about this, are we  
7 talking about an impromptu kind of thing, or is this  
8 premeditated where this is a weapon that you've  
9 taken time to craft and build out of whatever random  
10 junk you can find lying around?

11 MR. JEWKES: We can go both ways.

12 MR. BRIMMER: Because if you're in a  
13 situation where you're not supposed to have a weapon  
14 and you premeditated to have a weapon, that right  
15 there is your crime. We're in a federal courthouse.  
16 We're not allowed to have firearms. If I somehow  
17 got a firearm up here and someone attacks me and I  
18 pull out my firearm and I use it, yes, I'm defending  
19 myself but I'm doing so in an illegal manner.  
20 Whereas if there is a fork laying on the ground for  
21 whatever reason and somebody attacks me and I grab  
22 that fork, that's not a premeditated thing. I'm  
23 using what's in my environment around me. And that  
24 is what would be considered in the throes of  
25 instinct or passion or however you want to phrase



1 it.

2 MR. JEWKES: Okay. Who else would like to  
3 respond on the question of weapons?

4 MS. TAYLOR: I agree with the last person  
5 that again, if you fashion a weapon, make it, hide  
6 it, and plan to use it if you're attacked, that's  
7 premeditated and you've broken a rule. I think part  
8 of the big issue is: There are rules that you need  
9 to follow. If there's a spur of the moment and  
10 you're attacked and you pick up what's around you,  
11 then I feel that's fight or flight and you're going  
12 to try to save your life. But if you've fashioned a  
13 weapon and you have it hidden, then you've broken a  
14 rule. And people need to follow rules. And you've  
15 lost your right to a whole bunch of rules because  
16 you're in prison.

17 MR. JEWKES: Would you -- how can I word  
18 this? Would you follow the rules even though it  
19 might cost you your life, with regard to possession  
20 of a weapon, a simple weapon?

21 MS. TAYLOR: Would I follow the rule? I  
22 do it every day. I don't take a gun with me, but  
23 every day you live in Albuquerque or you go into  
24 town, I'm sorry, the amount of shootings -- I mean,  
25 anywhere you go. I follow that rule every day and I

1 don't take a weapon with me. And my life is at  
2 risk -- anytime you get in a car, your life is at  
3 risk. So there are lots of things you do every day  
4 that put your life at risk, and you do them anyway,  
5 because I follow rules. And I think the rules are  
6 better placed because people do follow rules. And  
7 all of us don't have our guns and all of us don't  
8 have our premeditated stuff and our weapons handy  
9 beside us just because somebody yells at us.

10 MR. JEWKES: Who else would like to sound  
11 off about the right to protect oneself? Yes, sir.  
12 Your number?

13 MR. BAXA: 65.

14 MR. JEWKES: Yes, sir.

15 MR. BAXA: When you originally posed the  
16 question of what do we think about the right to arm  
17 ourselves, I'm assuming you mean the right to arm  
18 ourselves in defense or just arm ourselves in  
19 general?

20 MR. JEWKES: In defense.

21 A. Okay. Because I mean, okay, I'll just  
22 state I don't have experience with prisons. I've  
23 never been in prison, you know, as far as -- as much  
24 as my knowledge is from TV and movies and reading  
25 and things like that. And I understand that usually

1 a weapon crafted in a prison does take time to  
2 craft. You know, it's either it's a filed-down  
3 toothbrush or it's a piece of broken glass, or it's  
4 a piece of wood or it's a twisted fork, something  
5 that takes time to procure and refine into a simple  
6 weapon.

7 So the concept of, you know, I'm going to  
8 grab whatever I have lying around me because someone  
9 is attacking me that I wasn't expecting -- I mean,  
10 besides if you're in your cell, you're just going to  
11 have sheets or you're going to have, like, possibly  
12 a book. You're not going to have anything that can  
13 be considered a simple weapon.

14 I think that my personal opinion is that  
15 having a simple weapon crafted with full intention  
16 of defense only is something comparable to the Cold  
17 War, whereas both sides had a lot of nuclear devices  
18 with the intention of not using them; it was seen  
19 simply as a hold of power. You know, it's a  
20 stature, a level that you hold. And they were built  
21 for intention of defense.

22 And I fully believe that if you're in  
23 prison and you know that someone is possibly  
24 thinking of trying to take your life, if you've been  
25 threatened or if you have reason to believe that you

1 need to defend yourself in a situation, that  
2 procuring -- you know that they'll most likely come  
3 at you. They're not just going to fistfight you.  
4 They'll most likely come at you with a shiv, with a  
5 knife, with a simple weapon that I believe as a  
6 deterrent to procure one's own simple weapon should  
7 be the thing that you would do for survival. If  
8 you're talking about, you know, human nature of  
9 preservation is one of our core elements built in.  
10 I feel like that's part of it.

11 MR. JEWKES: You are the second or third  
12 person to mention -- to make reference to a homemade  
13 weapon. What's your basis for the belief about a  
14 homemade weapon? Because a rock that you pick up  
15 off the ground can be a weapon. But do you have  
16 something else in mind, something you've read?

17 MR. BAXA: No, no. I mean, honestly -- I  
18 suppose I should rephrase. Any simple weapon, any  
19 simple weapon that you procure in self-defense, I  
20 would understand -- I could understand why they  
21 would procure a simple weapon, whether it be a rock  
22 or whether it be something sharp that is able to  
23 elevate your defense in a combat situation in  
24 prison.

25 MR. JEWKES: Okay. Anyone else want to

1 sound off about the right to protect oneself?

2 You, sir. Number 14?

3 MR. COMPTON: 14. Well, I just had a  
4 comment. When you first asked the question, that's  
5 just a general hypothetical statement; right? I  
6 assume -- can I assume that during the trial  
7 we'll -- the jury would hear specifics of the law?  
8 Because even here outside, it's controversial,  
9 according to the law, how much of a right you have  
10 to protect yourself. There was a case up in  
11 Albuquerque that was in my neighborhood. A guy  
12 allegedly -- or, well, he did walk onto his property  
13 or something, was trespassing, maybe a burglar, we  
14 don't know what. The homeowner had a gun and chased  
15 him down hundreds of yards, like a quarter-mile down  
16 the street and shot him. No charges filed. I was  
17 appalled. I assume we're going to get to specifics  
18 of what's allowed legally and what's not. Am I  
19 right?

20 MR. JEWKES: I'm sorry. I'm not following  
21 you exactly. Your last --

22 MR. COMPTON: Your question was general  
23 and hypothetical, but the law gets specific on these  
24 things; right?

25 MR. JEWKES: Yes.

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1 MR. COMPTON: Because it varies state to  
2 state how much you have a right to defend yourself  
3 if you're a gun owner. I'm not, but, you know, a  
4 lot of people are. That's varying, state by state,  
5 how much of a right you have to protect yourself  
6 with a gun.

7 MR. JEWKES: That is a body of law  
8 regarding the use of force or deadly force.

9 MR. COMPTON: Right. Okay. That was my  
10 question. But we'll get more specific?

11 MR. JEWKES: I beg your pardon?

12 MR. COMPTON: During the trial, you'll be  
13 more specific how much right you have to defend  
14 yourself?

15 MR. JEWKES: Hard to say at this point in  
16 time because we haven't heard the witnesses.

17 MR. COMPTON: All right. Thanks.

18 MR. JEWKES: But you know what? That  
19 brings up a good point. I'm glad you mentioned  
20 that.

21 Ms. Hournbuckle, number 23. You're  
22 getting your exercise today. Ma'am, you responded  
23 earlier regarding whether or not you could consider  
24 body language or demeanor in determining the  
25 credibility of witnesses or something to that

1 effect. Am I close?

2 MS. HOURNBUCKLE: Yes, sir.

3 MR. JEWKES: And I assume -- and if I'm  
4 wrong, correct me; it won't be the first time I've  
5 been corrected -- you're concerned about just what  
6 tools, mental tools, you can use to determine the  
7 credibility of witnesses. Am I --

8 MS. HOURNBUCKLE: Not -- well, in a sense,  
9 okay. I have been an interpreter for deaf people  
10 for quite a number of years, and so I've learned to  
11 read a lot of body language. And a lot of it is  
12 similar to just ordinary people who don't know sign  
13 language. So when I look at a person and talk to a  
14 person, I see a lot in their eyes and their  
15 mannerisms. You know, sometimes it tells me things  
16 or at least my perception, like maybe they're lonely  
17 or they're nervous, or whatever the case might be.  
18 Not to say that I'm right all the time, but that's a  
19 perception that I would get.

20 And when I asked that question, I was just  
21 wondering -- because my husband used to tell me I  
22 was really gullible all the time. So I've learned  
23 through the years to not necessarily take what  
24 someone says at face value, because they may not be  
25 telling the truth. So I'm just looking at ways

1 to -- because we were talking about how would you  
2 know if someone was telling the truth or not. So  
3 that was just one means, but --

4 MR. JEWKES: Well, let me ask you this. I  
5 get the impression that you want to be a good juror.

6 MS. HOURNBUCKLE: Yes, sir.

7 MR. JEWKES: And you want to do the right  
8 thing.

9 MS. HOURNBUCKLE: Yes, sir.

10 MR. JEWKES: And you want to walk out of  
11 here with a clear conscience.

12 MS. HOURNBUCKLE: Exactly.

13 MR. JEWKES: Correct?

14 MS. HOURNBUCKLE: Exactly.

15 MR. JEWKES: Let me ask you some  
16 questions. Do you have children?

17 MS. HOURNBUCKLE: Grown, yes.

18 MR. JEWKES: Grown children?

19 MS. HOURNBUCKLE: Grown.

20 MR. JEWKES: But they were little, once  
21 before.

22 MS. HOURNBUCKLE: Once.

23 MR. JEWKES: If you don't mind me asking,  
24 how many children do you have?

25 MS. HOURNBUCKLE: Two sons.



1 MR. JEWKES: Two boys?

2 MS. HOURNBUCKLE: Yes, sir.

3 MR. JEWKES: How close in age?

4 MS. HOURNBUCKLE: Two years apart.

5 MR. JEWKES: Okay. Did they ever fight  
6 with each other?

7 MS. HOURNBUCKLE: They're not getting  
8 along to this day.

9 MR. JEWKES: When they were younger?

10 MS. HOURNBUCKLE: But yes, yes.

11 MR. JEWKES: And did Mom ever have to wade  
12 in and decide -- separate them, decide what the  
13 facts are, who started what, that sort of thing?  
14 Because if you didn't, ma'am, it's not an  
15 all-American family.

16 MS. HOURNBUCKLE: I had to jump on the  
17 pile one time to try to break them up. I thought  
18 one was going to kill the other one.

19 MR. JEWKES: Been there, done that. Okay.  
20 So you have your two sons in front of you trying to  
21 figure out what happened, who started it, who did  
22 what. Generally, as a mother, did you have a pretty  
23 good idea which one was telling you the truth?

24 MS. HOURNBUCKLE: I was not as good as my  
25 husband. I really had to rely on him a lot, because

1 I didn't have good perception about that type of  
2 thing. You would think, but I was going through  
3 some health issues, too.

4 MR. JEWKES: I would submit to you, ma'am,  
5 that the tools, the mental tools you used with your  
6 sons would be somewhat similar to the tools that you  
7 would use in this courtroom to determine  
8 credibility. And sometimes you have to rely on your  
9 gut, spelled G-U-T. Does that make sense to you?

10 MS. HOURNBUCKLE: Definitely. But that as  
11 opposed to, like, evidence on papers, video, or  
12 whatever, that's a whole different thing. But that  
13 obviously, from what you're saying, is part of the  
14 process in us coming to a decision. Is that what  
15 I'm hearing you say?

16 MR. JEWKES: I think the point I'm trying  
17 to make is that you have to weigh the evidence as it  
18 comes to you. Okay. It's not magic.

19 MS. HOURNBUCKLE: All right.

20 MR. JEWKES: But it is hard work. Do you  
21 believe everything you see and hear on television?

22 MS. HOURNBUCKLE: Definitely not. I  
23 hardly watch it because of that.

24 MR. JEWKES: And when you see some  
25 advertisement, you know they're trying to sell you

1 something, don't you?

2 MS. HOURNBUCKLE: Definitely.

3 MR. JEWKES: You know they want in your  
4 pocketbook.

5 MS. HOURNBUCKLE: Exactly.

6 MR. JEWKES: Do you weigh that and decide  
7 just how much credibility you give to that ad that's  
8 going to give you cleaner underwear or whatever  
9 they're --

10 MS. HOURNBUCKLE: I'm very hard to  
11 convince with those commercials.

12 MR. JEWKES: I don't blame you, ma'am.

13 MS. HOURNBUCKLE: I don't buy the latest  
14 and the greatest, so I'm not easily swayed in that  
15 way.

16 MR. JEWKES: Well, does it make sense to  
17 you that with regard to, let's say, video evidence  
18 or audio evidence, that you have to see that  
19 evidence, hear it, and draw your own conclusion as  
20 to whether or not in your mind it's credible?

21 MS. HOURNBUCKLE: Yes, sir.

22 MR. JEWKES: Does that make you feel  
23 better about the potential of being on this jury?

24 MS. HOURNBUCKLE: Definitely, because I'm  
25 kind of a concrete thinker, logical, like she said,

1 and I can see the pieces of the puzzle and make some  
2 sense out of it, hopefully. That's kind of how my  
3 brain operates, but it operates.

4 MR. JEWKES: There's nothing wrong with  
5 that. I'm sure you'll do fine, ma'am.

6 Number 50, Anastasia Wolfe.

7 MS. WOLFE: Yes.

8 MR. JEWKES: Mrs. Wolfe, I don't know that  
9 I'm going to quote this exactly the way you said it,  
10 but you did make mention of evidence presented to  
11 us, something about the type of evidence presented  
12 to you, and I got the impression that what you were  
13 asking is: Did it make a difference which side  
14 presented the evidence? Was that the sum of your  
15 thought process, or did I totally miss that?

16 MS. WOLFE: I'm not sure I remember what  
17 you're talking about, but I do believe that I  
18 understand that the Government needs to present  
19 their case, including all the evidence, to --

20 MR. JEWKES: Well, Ms. Wolfe, let me tell  
21 you. The Government goes first. Okay? The  
22 Government is going to bring some witnesses, some  
23 evidence in here, some by the way of witnesses, some  
24 of it by way of physical evidence, okay?  
25 Photographs.

1 MS. WOLFE: Yes, sir.

2 MR. JEWKES: Documents, called documentary  
3 evidence, that sort of thing. Now, each time the  
4 Government offers evidence, the defense has the  
5 right to cross-examine.

6 MS. WOLFE: Okay.

7 MR. JEWKES: In the case of a Government  
8 witness, whoever that may be, once he or she  
9 testifies, the defense team, one by one, gets to  
10 cross-examine that witness.

11 MS. WOLFE: Yes, sir.

12 MR. JEWKES: The purpose of  
13 cross-examination is two-fold. First of all, is the  
14 witness accurate? Secondly, is the witness  
15 credible?

16 MS. WOLFE: Yes, sir.

17 MR. JEWKES: Truthful? Okay. Now,  
18 evidence can come out through cross-examination.  
19 Then there is another form of evidence called  
20 impeachment evidence. And we'll get into that  
21 during the trial. Okay?

22 MS. WOLFE: Okay.

23 MR. JEWKES: That's where evidence is  
24 presented to the jury to discredit something that's  
25 been said or been done in your presence, shown in

1 your presence. Okay?

2 MS. WOLFE: Okay.

3 MR. JEWKES: So evidence comes from  
4 different sources, not just the Government.

5 MS. WOLFE: I understand.

6 MR. JEWKES: It can come from the defense.  
7 Your job is to weed through all that with an open  
8 mind.

9 MS. WOLFE: Yes, sir.

10 MR. JEWKES: Can you do that?

11 MS. WOLFE: Yes, I can do that.

12 MR. JEWKES: All right.

13 One last question. A number of you  
14 throughout the last two days have used the term  
15 "prison culture" in various formats and whatnot.  
16 I'd like to have some idea. Where did you learn  
17 about prison culture? You, sir.

18 MR. RODRIGUEZ: I previously stated that I  
19 worked with the feds as a paralegal and other  
20 various jobs, so I also have -- I've had friendly  
21 relationships with law enforcement, local and  
22 federal. I've also had similar relations with  
23 correction officers. So, you know, people talk.  
24 That's just what people do, and most of their  
25 anecdotes and stories, you know -- I've learned a

1 few things from talking to them.

2 MR. JEWKES: Do you watch prison shows?

3 MR. RODRIGUEZ: I can't say that I do that  
4 much. I don't watch the popular "Breaking Bad,"  
5 either, because since you live in that world, it's  
6 very -- you become very critical of it, I guess.

7 MR. JEWKES: You don't have to apologize  
8 to me. I watch the old Westerns.

9 MR. RODRIGUEZ: Those are good.

10 MR. JEWKES: What about some of the rest  
11 of you? What do you know about prison culture and  
12 where did you get that experience? Anyone want to  
13 volunteer?

14 Yes, ma'am. State your number, please.

15 MS. MURPHY: 63. I'll put it out there.  
16 I watch "Lock Up Raw." I've seen it.

17 MR. JEWKES: I'm sorry, ma'am, I was  
18 looking off. Would you repeat what you said?

19 MS. MURPHY: I've seen the show "Lock Up  
20 Raw" or "Lock Up New Mexico." I've seen those  
21 shows.

22 MR. JEWKES: What channel does that come  
23 on?

24 MS. MURPHY: It's on MSNBC.

25 MR. JEWKES: It's, what, like a docudrama?

1 MS. MURPHY: They go into prisons and  
2 interview prisoners and just basically give you an  
3 idea of what the life is there --

4 MR. JEWKES: Do they ever --

5 MS. MURPHY: -- as a deterrent.

6 MR. JEWKES: Do they ever interview any of  
7 the inmates?

8 MS. MURPHY: Yes.

9 MR. JEWKES: Do some of the inmates like  
10 to brag?

11 MS. MURPHY: I imagine, yeah.

12 MR. JEWKES: I've watched -- not that  
13 particular show, but I've watched a few docudramas.  
14 Do you ever get the impression that a lot of these  
15 guys like to inflate their own egos?

16 MS. MURPHY: Well, yeah. They're  
17 basically giving their own biography, so I'm sure  
18 it's embellished.

19 MR. JEWKES: Yeah. So you don't really  
20 know exactly what to believe, or did I misstate  
21 that?

22 MS. MURPHY: Well, I didn't say that I  
23 believe it. I said I watched it.

24 MR. JEWKES: Oh, yes, ma'am. No, I  
25 understand. Believe me, I'm on the same page as you



1 are.

2 MS. MURPHY: It is television, so...

3 MR. JEWKES: Yes, ma'am. For  
4 entertainment purposes.

5 MS. MURPHY: Absolutely.

6 MR. JEWKES: But there is some  
7 embellishment; is that correct?

8 MS. MURPHY: I would say there is. It's a  
9 docudrama.

10 MR. JEWKES: Yes, ma'am.

11 Anybody disagree with that? If so, raise  
12 your hand.

13 Ladies and gentlemen, I thank you for your  
14 patience, and we look forward to seeing 12 of you on  
15 the jury.

16 THE COURT: Thank you, Mr. Jewkes.

17 All right. Let me see counsel up here at  
18 the bench.

19 (The following proceedings were held at  
20 the bench.)

21 THE COURT: Everybody in here? Are there  
22 any additional questions that should be asked?  
23 Anything that you think has been overlooked, Mr.  
24 Beck?

25 MR. BECK: I don't think so, Your Honor.

1 THE COURT: All right. Ms. Duncan, how  
2 about you?

3 MS. DUNCAN: I think we're going to ask  
4 about number 30. I think he's the man who owns the  
5 restaurant. If we could just have the list.

6 (The following proceedings were held in  
7 open court.)

8 THE COURT: Just turn around and ask the  
9 question for 38.

10 MS. DUNCAN: I have a question for juror  
11 38. Mr. Sanchez.

12 THE COURT: You can just answer from  
13 there.

14 MS. DUNCAN: I'm sorry. It's kind of  
15 weird having all these lawyers up here.

16 I wanted to ask you about your hardship.  
17 And I'm sorry, when I was going through my list, I  
18 went too quickly. I think you own a restaurant here  
19 in Las Cruces; is that correct?

20 MR. SANCHEZ: Yes.

21 MS. DUNCAN: And you had to close it down  
22 yesterday to come to jury selection?

23 MR. SANCHEZ: Yesterday and today.

24 MS. DUNCAN: So why is it that if -- when  
25 you come for -- if you were chosen for this

1 six-to-eight-week jury, that you'd have to close  
2 your restaurant?

3 MR. SANCHEZ: Yes.

4 MS. DUNCAN: Is there anyone else, your  
5 employees, who could run it for you?

6 MR. SANCHEZ: No, there isn't. Because  
7 it's a really small restaurant, and I just took it  
8 over not that long ago. So I don't even have a  
9 second cook. It's just me and one other person. So  
10 like if I'm gone -- and then I do all the prep work.  
11 They don't even know how to do that.

12 MS. DUNCAN: Is your restaurant typically  
13 open during the day for lunch?

14 MR. SANCHEZ: It's from 11:00 to 8:00  
15 Monday through Friday. We're not even open on the  
16 weekends.

17 MS. DUNCAN: Thank you very much, Mr.  
18 Sanchez.

19 THE COURT: Anybody else? Any other  
20 counsel that have questions?

21 (The following proceedings were held at  
22 the bench.)

23 THE COURT: Any additional questions to  
24 ask anything else that's been overlooked.

25 MR. VILLA: Juror number 2 has the issue

1 about knowledge of marshals, she'd socialized with  
2 the marshal's girlfriend. I'd like to ask her a few  
3 more questions about that. Maybe we can do that at  
4 the bench.

5 THE COURT: All right.

6 MR. VILLA: I think it was juror number 2.

7 (The following proceedings were held in  
8 open court.)

9 THE COURT: Ms. Benavidez, if you'll come  
10 up here.

11 (The following proceedings were held at  
12 the bench.)

13 THE COURT: Why don't you stand right  
14 here. How are you could today?

15 MS. BENAVIDEZ: Good, thank you.

16 THE COURT: Mr. Villa.

17 MR. VILLA: Sure. Ms. Benavidez, I'm not  
18 sure if I have the name, but do you have a friend  
19 whose boyfriend is a United States marshal?

20 MS. BENAVIDEZ: A friend whose  
21 boyfriend -- yeah. He's here actually.

22 MR. VILLA: Do you know his name?

23 MS. BENAVIDEZ: No, I don't. It's  
24 actually my wife's friend. Actually her boyfriend  
25 or husband. I don't know what they are.

1 MR. VILLA: So do you socialize with this  
2 marshal?

3 MS. BENAVIDEZ: No, I barely even  
4 recognized him when I came in. I'd seen him before  
5 at a birthday party or something.

6 MR. VILLA: And are you friends with the  
7 marshal's significant other?

8 MS. BENAVIDEZ: No. Again, just through  
9 my wife. But I don't know her that well. But  
10 occasionally at social things, a birthday or a baby  
11 shower or something like that.

12 MR. VILLA: Has your wife conveyed to you  
13 that she's received any information about this case  
14 through her relationship?

15 MS. BENAVIDEZ: Not at all.

16 THE COURT: Anybody else?

17 MR. BECK: Would your knowledge or your  
18 relationship with this U.S. marshal, to the extent  
19 that it exists, cause you to be unfair or partial to  
20 any one party one way or the other in this case?

21 MS. BENAVIDEZ: No.

22 THE COURT: Ms. Duncan, go ahead. Mr.  
23 Beck, are you done?

24 MR. BECK: Yes.

25 MS. DUNCAN: No questions, Your Honor.

1 THE COURT: Ms. Bhalla, Ms. Jacks,  
2 Mr. Jewkes?

3 All right. Thank you, Ms. Benavidez.

4 All right. Any additional questions that  
5 should be asked? Anything else that's been  
6 overlooked, Mr. Beck?

7 MR. BECK: I think Mr. Lowry may have  
8 something.

9 THE COURT: Do you have anything, Ms.  
10 Duncan?

11 MS. DUNCAN: No, Your Honor.

12 THE COURT: Ms. Bhalla? Anything?

13 All right. Well, I'm going to excuse the  
14 jury, and I'm going to give them some instructions.  
15 It will be a little different than what we've given  
16 in the past, tell them how long I anticipate we'll  
17 be back here, so let them go.

18 MR. BECK: Thank you, Your Honor.

19 (The following proceedings were held in  
20 open court.)

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22

23

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1           THE COURT: All right, ladies and  
2 gentlemen. Let me first of all thank you on behalf  
3 of the Court and on behalf of the parties and  
4 counsel for your patience over the last couple of  
5 days answering a whole host of questions. I  
6 appreciate the way you went about your task,  
7 good-natured, and we know it's quite an imposition,  
8 and we appreciate the way you went about your task.  
9 Obviously, we couldn't do what we do here in Federal  
10 Court if you didn't do what you've done over the  
11 last day and a half or a little more than that. I  
12 appreciate that very much.

13           I'm going to excuse you for a while, and  
14 I'm going to make an estimate here of about an hour  
15 and a half. What I would ask you to do is just go  
16 outside the courtroom and relax, and come back in  
17 about 4:15 to the front of the courtroom. Don't  
18 come into the courtroom. But about 4:15 come up and  
19 we'll see where we are at that point.

20           A couple of things. You're not going to  
21 be seated in the seats when you come back in, if you  
22 come back in. We'll have to see how things go. So  
23 take your belongings with you so when you leave,  
24 when you come back in, you'll most likely be sitting  
25 back there rather than the jury box. Take your

1 belongings with you.

2 Because we are taking a break and we're  
3 done with voir dire, at least with this group, I'm  
4 going to remind you of a few things that are  
5 especially important. Until the trial is  
6 completed -- and it's not even really begun --  
7 you're not to discuss the case with anyone, whether  
8 it's members of your father-in-law's people involved  
9 in the trial or anyone else and that includes your  
10 fellow jurors if anyone approaches and tries to  
11 discuss the trial with you, please let me know about  
12 it immediate limit also don't read or listen to any  
13 news reports of the trial again stay off the  
14 internet in any form for doing research for purposes  
15 of this case and finally remember that you must not  
16 talk about anything with any person who is involved  
17 in the trial even if it doesn't have anything to do  
18 with the trial. If you need to speak with me simply  
19 give a note to one of the Court security officers or  
20 the courtroom deputies here. Some of you may not  
21 hear these instructions again and some of you may  
22 hear them a lot more. So bear with us for about an  
23 hour and a half and start gathering -- you can kind  
24 of relax for an hour and a half and then if you'd  
25 start gathering at about 415 out front, then we

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1 should have a little bit of direction on where we're  
2 going. I appreciate your hard work. I'll ask  
3 everybody to rise.

4 (The venire panel left the courtroom.)

5 THE COURT: Everyone be seated. Here's  
6 what I would propose to do. I know that y'all have  
7 had discussion about peremptory challenges. So I  
8 think there's some folks on the list that we're just  
9 going to have to -- I'm going to have to hear you  
10 out. And the Government is going to go first in  
11 this exercise. I would propose we go about 15  
12 minutes. Let the Government go first, and we'll  
13 begin to tackle some of these. And then we'll take  
14 a break, because I know the defendants are going to  
15 need to consult a little more on strategy.

16 But I was going to say, let's get started  
17 on it for about 15 minutes. Anybody have any strong  
18 problems with that?

19 All right. Why don't we get started. Mr.  
20 Beck, by name and number, do you want to start?

21 MR. BECK: I think I'm handing the baton  
22 to Ms. Armijo.

23 THE COURT: Okay, Ms. Armijo. I think on  
24 this one I'm going to make probably some individual  
25 calls, rather than just letting y'all necessarily

1 agree. The agreement will be very influential, but  
2 I think I may make some individual calls. So let's  
3 just take them one at a time.

4 Who is your first peremptory challenge,  
5 Ms. Armijo?

6 MR. BECK: Cause and hardship.

7 THE COURT: I'm sorry, I'm using for  
8 cause. I'm sorry.

9 MS. ARMIJO: I was, like, "Wait."

10 Okay. Sorry. Our first one would be  
11 number 7 for cause. She fell asleep yesterday  
12 during part of the proceedings and was looking down.

13 THE COURT: How do the defendants feel  
14 about Ms. Montes?

15 MS. DUNCAN: Your Honor, on behalf of Mr.  
16 Baca, we oppose striking Ms. Montes for cause. I  
17 did not observe her fall asleep, and no one brought  
18 it to our attention. I didn't see her asleep, and  
19 no one brought the issue to us, to our attention,  
20 for us to have the opportunity for us to observe  
21 anything. Certainly none of her answers would give  
22 rise to a cause challenge. So on behalf of Mr.  
23 Baca, we would oppose.

24 THE COURT: Is there anyone else that  
25 wants to speak on this?

1 MS. BHALLA: I actually observed her  
2 leaning back in her chair today, but she wasn't  
3 asleep. She was actually, I think, paying  
4 attention. And every time I looked at her, she was  
5 alert, she was responsive, she volunteered. I saw  
6 her answer a number of questions. She never had to  
7 have a question repeated. She always knew what was  
8 being asked. I did not get the impression once that  
9 she wasn't paying attention to the proceedings or  
10 fully engaged in the proceedings. So we're going to  
11 object to her for cause, Your Honor.

12 THE COURT: Anybody want to add anything  
13 on the defense side?

14 MR. VILLA: Your Honor, for Mr. Perez, I  
15 would just say there has been no record that she  
16 fell asleep. We're relying solely on the  
17 Government's allegation.

18 MS. JACKS: We join in the comments.

19 THE COURT: Anything else on Ms. Montes,  
20 Ms. Armijo?

21 MS. ARMIJO: No, Your Honor. I think it  
22 primarily was when we were dealing with a lot of  
23 one-on-one witnesses. So I know the defense is  
24 facing them, but it would have been -- we observed  
25 it for a long period when we were up there. So I

1 apologize for not bring it to the Court's attention.

2 The next one --

3 THE COURT: Let me make a ruling on it.

4 I'm going to overrule the for-cause challenge to  
5 Ms. Montes. Ms. Wild and I have done lots of  
6 trials, and we know part of our job is keeping the  
7 jurors awake. I didn't observe anything. Now,  
8 you're right, at that time when I'm working  
9 one-on-one with jurors, I'm probably not going to be  
10 staring at Ms. Montes. But I don't think that that  
11 allegation by the Government is sufficient for me to  
12 strike her from the venire. So I will overrule and  
13 leave Ms. Montes on the jury pool.

14 All right, Ms. Armijo?

15 MS. ARMIJO: The next one would be number  
16 13 for cause. I believe he --

17 THE COURT: Did you say 13?

18 MS. ARMIJO: 13, one-three, which is  
19 Gonzales. He indicated that he could not render a  
20 fair -- a verdict because of his fear of  
21 retaliation. I believe he spoke about it for quite  
22 some time.

23 MR. VILLA: Your Honor, I think all the  
24 defense agrees, but I'll let anybody stand up if I'm  
25 wrong.

1 THE COURT: Well, I do think that he  
2 indicated that -- I mean, some of them have fear or  
3 anxiety, the way they put it. The anxiety was over  
4 the difficulty of the case. Some of it was fear of  
5 retaliation. But they still said they could do  
6 their duty. And I don't think we can suck the  
7 anxiety out of the case. We want them to be a bit  
8 on their toes, when they go back there, to do the  
9 right job and take it seriously. But I do think in  
10 his case, he did indicate that he thought his fear  
11 would affect how he would make decisions in this  
12 case. So I'm going to sustain the objection to  
13 juror number 13, Mr. Gallegos.

14 MR. VILLA: Gonzales.

15 THE CLERK: Gonzales.

16 THE COURT: Mr. Gonzales.

17 MS. ARMIJO: I believe number 11 for  
18 hardship. Her husband is going to Rochester.  
19 She'll get the appointment dates in a couple of  
20 weeks. And she also is going to be putting her  
21 house up for sale. I believe he's been going  
22 through some treatments.

23 THE COURT: All right. How did the  
24 defendants feel about juror number 13 -- juror  
25 number 11, Ms. Decramer?

1 MR. VILLA: Your Honor, all the defendants  
2 agree.

3 THE COURT: Well, this is my thought about  
4 Ms. Decramer, is that she indicated in a couple of  
5 weeks that's when they're going to get their  
6 information about when they're going to go to Mayo.  
7 So she didn't definitely say that they were going to  
8 Mayo in two weeks. She said they were going to get  
9 information about when they were going to go. I  
10 guess based upon what she said, I'm a little  
11 reluctant to excuse somebody who doesn't know if  
12 they're going to have the appointment within the  
13 period of time that we're here. It's just an  
14 unknown.

15 MR. BECK: Your Honor --

16 THE COURT: So I'm going to take this  
17 under advisement. I'm not going to rule at the  
18 present time on her.

19 Mr. Beck?

20 MR. BECK: I think my recollection of her  
21 differs with yours. I think she said that in two  
22 weeks they're going to the Mayo for an appointment,  
23 at which time they will be told whether he will  
24 undergo the surgery. So that's my recollection.

25 THE COURT: All right. Well, I'll take it

1 under advisement and give some thought to it. But  
2 right at the moment, I think I'm going to leave her  
3 on the panel.

4 MS. DUNCAN: And Your Honor, we had an  
5 additional -- and we agreed with the Government's  
6 hardship, but we also think that Ms. Decramer is  
7 excusable for cause. I believe it was Mr. Villa  
8 questioning about the right to silence. She said  
9 that she -- that if a defendant did not testify on  
10 his behalf, that she would weigh that against the  
11 defense, even if she was instructed by the Court not  
12 do that. That's something that would weigh on her  
13 mind.

14 And in terms of the house, my  
15 understanding is: She put the house up for sale and  
16 was concerned about -- they're going to be getting  
17 that ready to go in the next two weeks, and that's  
18 something that would be weighing on her mind, and  
19 something that would be distracting her from the  
20 trial. So it's not just the hardship, but also the  
21 fact that she would not respect the defendants'  
22 right to silence and would weigh it against them  
23 even if instructed not to do so by the Court.

24 THE COURT: Well, I think that's right.  
25 My notes do indicate that she did say that she'd

1 have problems keeping it out of her mind, and if --

2 MS. JACKS: I have something to add, as  
3 well, Your Honor.

4 THE COURT: Let me look at my notes a  
5 second.

6 All right. I'm going to excuse  
7 Ms. Decramer, not necessarily on hardship yet,  
8 although that is a factor, but my notes do indicate  
9 that she indicated she'd have a hard time keeping it  
10 out of her mind, and I think that that was asked  
11 several ways.

12 All right. You have your next one, Ms.  
13 Armijo?

14 MS. ARMIJO: Yes. Mr. Castellano can do  
15 this one.

16 MR. CASTELLANO: I have in my notes, Your  
17 Honor, Mr. Compton, number 14. He has a strong bias  
18 against police, based on a bad experience for a  
19 marijuana possession when he was younger. He said  
20 he didn't like the police. He convicted previously  
21 in another trial, but he said he felt pressure to  
22 convict on that previous one. So I've got concerns  
23 about his ability to make a decision. I think  
24 that's going to be weighing on him whenever he makes  
25 the decision here, and we've discussed in court the



1 anxiety which I agree with the Court, it's usually  
2 an anxious decision to make, but I think he's going  
3 to be second-guessing his decision based on his  
4 prior experience. He convicted, and now he said he  
5 felt pressure to convict. So I think that puts him  
6 in a slightly different position than other people  
7 with just standard anxiety.

8 THE COURT: All right. How do the  
9 defendants feel about Mr. Compton?

10 MR. VILLA: Your Honor, on behalf of Mr.  
11 Perez -- and I think Mr. Baca agrees with me -- I'm  
12 trying to help them out because they don't have the  
13 microphone. We disagree. We think that although he  
14 expressed concerns about some past incidents in his  
15 life, he never did say that he couldn't follow the  
16 Court's instructions, weigh an officer's testimony,  
17 not prejudge the officer's testimony before he came  
18 in here. I think that was his response to the  
19 Court's voir dire, and that he wouldn't prejudge  
20 their testimony, and that he could be fair to the  
21 Government despite his past incidents.

22 THE COURT: All right. How does  
23 Mr. Herrera feel? Do y'all have any feel on him?

24 MS. BHALLA: I think we concur with Mr.  
25 Villa and Mr. Baca.

1 THE COURT: Ms. Jacks, Mr. Jewkes.

2 MS. JACKS: Your Honor, I think we don't  
3 think anything he said rises to the level of a cause  
4 excusal.

5 THE COURT: Okay. Anything else you want  
6 to say on that, Mr. Castellano?

7 MR. CASTELLANO: No, Your Honor.

8 THE COURT: Well, you know, the fact that  
9 somebody has thought about it -- he continued to say  
10 on his questionnaire and in court that he thought  
11 the guy was guilty. He said he thought it was under  
12 the law, but he just felt badly about it, and the  
13 fact that a guy stewes over a jury verdict is  
14 probably a good sign. And I didn't detect a  
15 hostility to police. He had his incident, but he  
16 assured us that he could treat each witness the  
17 same, treat police officers, law enforcement, the  
18 same.

19 So I'm going to overrule the objection to  
20 number 14 and leave him on the venire.

21 All right, Ms. Armijo. Do you have any  
22 others?

23 MS. ARMIJO: Yes, Your Honor, number 38,  
24 the restaurant owner that we last heard from, who I  
25 believe is Mr. Sanchez. He indicated that he just

1 opened up a restaurant, and he has employees, but  
2 he's been shut for two days and will be shut down, I  
3 guess, for six to eight weeks if he goes to trial --  
4 as a juror, I'm sorry, in this case.

5 THE COURT: All right. What's the  
6 defendants' thoughts on Edric Sanchez, juror number  
7 38?

8 MR. VILLA: Your Honor, all defendants  
9 agree. We think that the hardship is significant  
10 enough that he ought to be let go for hardship  
11 reasons. He says his business is only open Monday  
12 through Friday 11:00 to 8:00. He's not open on the  
13 weekends. He just opened it. So that he doesn't  
14 have anyone else that he's trained to be able to  
15 prep, or hire another cook, or anyone else that  
16 could run this restaurant. I think it's too long of  
17 a trial to not grant him hardship.

18 THE COURT: Well, I'm going to think about  
19 Mr. Sanchez. We're going to have to make some tough  
20 calls on hardship. Let's maybe think about him. I  
21 guess I thought it was a little unusual and I think  
22 it was Ms. Duncan that asked him the questions: Why  
23 don't you have somebody that can run it? And he  
24 didn't seem like much of an operation. It's not  
25 like it's throwing a bunch of people out of work.

1 So let me think about it.

2 All right. Ms. Armijo does the Government  
3 have the next one?

4 MS. ARMIJO: Number 42, who I believe is  
5 Mr. Youngblood, because of his election, I believe  
6 he indicated that he spent thousands of dollars for  
7 his campaign, and that basically he would be losing  
8 the campaign if he were allowed to -- or if he were  
9 picked to be on this jury.

10 THE COURT: All right. How do the  
11 defendants feel about Mr. Youngblood?

12 MR. VILLA: Your Honor, all the defendants  
13 agree that he's got a hardship. I think that he  
14 said specifically that the election for city counsel  
15 that he spent thousands of dollars on is going to  
16 take place during the trial. It's March 6,  
17 according to our notes over here. I think he also  
18 said that he had a cruise planned and paid for  
19 during the period of the trial. I don't remember  
20 the dates, but he did say he had a cruise planned  
21 and paid for.

22 THE COURT: How does that work? You can't  
23 serve on the jury, but he can take a cruise? How  
24 does that work?

25 MR. VILLA: Well, Your Honor, I think the

1 cruise was spring break, so it's not during the  
2 election, but it could be during the time of the  
3 trial, depending if it goes six to eight weeks, it  
4 could be -- so the election is March 6, spring break  
5 is shortly after that, and I think that was his  
6 concern with the cruise.

7 He also indicated he's a small business  
8 owner and it could be a hardship. He has a couple  
9 of different shops. One of them his son runs and  
10 his son I think had jury duty in Lovington. So if  
11 he got set, then the son wouldn't be able to run one  
12 of the shops, and then, of course, if Mr. Youngblood  
13 got set, then nobody could run his shop. So he's  
14 got maybe three different reasons for hardship.

15 THE COURT: Well, let me think about  
16 Mr. Youngblood. His seemed -- I mean, he has a shop  
17 but he has a son that works. He's taking trips. I  
18 don't know. I know the election is -- elections are  
19 what they are. But let me give it some thought.  
20 I'll take that under advisement.

21 All right. Ms. Armijo, do you have  
22 further for-cause challenges?

23 MS. ARMIJO: Number 59. Based on the  
24 can't decide based on the evidence, based upon the  
25 anxiety, and fear of being picked for the jury.

1 THE COURT: What's the defendants'  
2 thoughts on Mr. Fink?

3 MR. VILLA: May we have just a minute,  
4 Your Honor?

5 THE COURT: You may.

6 MS. JACKS: Could the Court get Ms. Armijo  
7 to restate -- I didn't clearly hear it.

8 THE COURT: What Ms. Armijo said was  
9 number 59, based on the account -- well, the  
10 notes -- the transcript is not real clear, so you  
11 better just repeat it, Ms. Armijo.

12 MS. ARMIJO: He was very similar to juror  
13 number 13, Mr. Gonzales. He indicated that -- in  
14 fact, I think he may have been the first one to  
15 bring it up. I'm not sure. He was one of the first  
16 ones that spoke very forcefully about his fear of  
17 retaliation in this case, and indicated that he has  
18 a great deal of anxiety that's been brought on and I  
19 have down that he can't decide -- the anxiety will  
20 cause him to not be able to decide the case based on  
21 the evidence.

22 MS. JACKS: Thank you for repeating it.

23 THE COURT: Defendants have thoughts on  
24 Mr. Fink?

25 MS. JACKS: Can we have a moment to chat

1 about it?

2 THE COURT: Why don't we do this? We'll  
3 take our break. That will give you a chance to talk  
4 on all these folks. I won't make you do it, but if  
5 you don't mind sharing maybe who you're going to  
6 move for challenges, Ms. Armijo, with the  
7 defendants, and that way they can maybe come up with  
8 a position and expedite things a little bit.

9 All right. We'll be in recess, then, for  
10 about 15 minutes.

11 (The Court stood in recess.)

12 THE COURT: All right. We'll go back on  
13 the record. What are the defendants' thoughts on  
14 Jason Fink.

15 MS. DUNCAN: Your Honor, we agree with the  
16 Government that Mr. Fink expressed fear that in this  
17 case there would be retaliation. He expressed it  
18 several times. He talked to the jury coordinator  
19 about it, and he said that would impact his ability  
20 to fairly consider the evidence in this case.

21 THE COURT: All right. The Court will  
22 sustain the objection to Jason Fink.

23 All right, Ms. Armijo, does the Government  
24 have any further for-cause challenges?

25 MS. ARMIJO: Yes. Our next one would be

1 number 65. Again, there was hesitation on her  
2 part -- or his part, I'm sorry, for retaliation.  
3 I'm sorry, I'm looking for my notes.

4 MS. JACKS: Can we please have a name, as  
5 well?

6 THE COURT: This is Rowen Baxa.

7 MS. ARMIJO: And he said it would affect  
8 his decisions specifically. This was Mr. Baxa. I  
9 believe it's spelled B-A-X-A. I believe he's the  
10 one that talked about his Slovakian name, and he's  
11 the only one here, kind of went on and on about it.

12 THE COURT: What's your thoughts, Ms.  
13 Duncan?

14 MS. DUNCAN: Your Honor, the defense  
15 agrees.

16 THE COURT: All right. The Court will  
17 strike for cause juror number 65, Rowen Baxa, for  
18 cause.

19 All right, Ms. Armijo, does the Government  
20 have further for-cause challenges?

21 MS. ARMIJO: Number 53, again, for fear.  
22 Ms. Winston indicated that she can't be fair and  
23 impartial due to her anxiety. I believe she  
24 indicated -- and the defendants can certainly  
25 correct us -- but we have down that she said it



1 would affect her decision.

2 MS. DUNCAN: And Your Honor, the defense  
3 agrees.

4 THE COURT: All right. The Court will  
5 strike juror number 53, Elizabeth Winston, for  
6 cause.

7 All right, Ms. Armijo, does the Government  
8 have further for-cause challenges?

9 MS. ARMIJO: Number 32, Your Honor. We  
10 would do him for cause, and I believe there was more  
11 involved -- well, at least for us there was a lot of  
12 concern yesterday when we were up at the bench, I  
13 believe he indicated that he had severe depression,  
14 that he doesn't know when these funks can come on,  
15 that he has a hard time functioning when he does.

16 Again, I know there is no certainty in it,  
17 but I believe he indicated that within a month  
18 period he was certain to get one. I believe he said  
19 a year ago he was in a psych ward. And so that  
20 caused a great deal of concern. And in just  
21 listening to his answers, I think he would say one  
22 thing and then his opinion would be something else.  
23 I think he was kind of -- you know, at times he was  
24 very favorable to the Government; at times he was  
25 not favorable to the Government and pro defense.

1 But most concerning was the fact that he has these  
2 issues, and that he was in a psych ward just a mere  
3 year ago.

4 MS. DUNCAN: And Your Honor, the defense  
5 agrees. And the only thing I would add is that he  
6 did say that it was this time of year when he had  
7 that severe depressive episode. And I think this is  
8 a time of year that triggers that kind of episode in  
9 a lot of people. And that definitely was a concern  
10 for us, and we would agree with Ms. Armijo's  
11 characterization of his answers that they seem quite  
12 over the map. But having him experience one of  
13 those severe depressive episodes and ending up  
14 hospitalized in the middle of trial -- I think it's  
15 a hardship and for case.

16 THE COURT: I'm not inclined to start  
17 excusing people for depression. About 40 percent of  
18 our population has depression, and he's not taking  
19 any medication for it, even though he's seeing,  
20 seems like, doctors for it. So it seemed that in  
21 his mind it was severe, but he's seeing doctors and  
22 it's not severe enough to be medicated for it. So  
23 I'm not inclined to strike him from the venire for  
24 depression.

25 MS. JACKS: Can I just be heard, Your

1 Honor, briefly? Because he indicated it's not just  
2 depression. He indicated serious depressive  
3 episodes. This guy is a combat veteran. I think he  
4 said he came back from the war about a year ago, or  
5 just around a year ago. And the only thing I would  
6 just offer to the Court -- because I just recently  
7 represented a Marine Corps reserve combat veteran.  
8 And the problems at the VA are serious and  
9 substantial, and the Court asked about, has he  
10 gotten a therapist and his answer -- I don't  
11 remember it exactly, and I don't have my notes in  
12 front of me -- but it was something like, "No, it's  
13 hard getting hooked up with a good therapist."

14 And I can say just from the experiences of  
15 my client that the situation at the VA is chaos, and  
16 it took my client two years and he didn't have a  
17 psychologist and he was shot in the head in Iraq.  
18 And in terms of -- he got the first psychologist  
19 because he picked up a federal case and the Court  
20 gave him one.

21 So I don't think it's an indication of  
22 Mr. Brimmer's -- the lack of seriousness of his  
23 depression that he's not getting treatment. I think  
24 it's an indication of the dysfunction at the  
25 Veterans Administration.

1 THE COURT: Well, and I'm not doubting he  
2 has depression. I'm taking him at his word for it.  
3 But if I start excusing people for untreated  
4 depression when 40 percent of the population have  
5 it, that's going to be difficult to seat juries.  
6 I'm going to overrule the for-cause challenge to  
7 him.

8 MR. VILLA: Your Honor, I apologize. Can  
9 I be heard on that one?

10 THE COURT: You may.

11 MR. VILLA: Can I do it from the --  
12 seated?

13 I asked Mr. Brimmer, because he  
14 distinguished between the serious episodes and the  
15 minor episodes, and frankly, at the time I was  
16 trying to rehabilitate him, and I asked if -- how  
17 often the severe episodes occurred, and I think he  
18 mentioned a few times a year, maybe a couple. And I  
19 asked him how often do minor episodes occur, and he  
20 says, "Weekly."

21 I don't remember off the top of my head  
22 how often. But then I asked him when the period of  
23 time that he zoned out or wasn't paying attention  
24 occurred, because I thought it was just during the  
25 serious episodes. And he said it occurs during the

1 minor episodes. And he said sometimes it can be  
2 half a day where he zones out and he doesn't pay  
3 attention.

4 And I think that that's the concern I  
5 have. I agree with the Court, we shouldn't be  
6 striking people for depression, even untreated  
7 depression. But the specific symptom I'm concerned  
8 about that he experiences at least weekly, where  
9 he's not paying attention and he had an inability to  
10 say that he could deal with it, manage it so he  
11 could listen to the evidence, so I think that's the  
12 real concern that I have, and that he should be  
13 stricken for cause.

14 THE COURT: All right. Ms. Armijo, does  
15 the Government have any further challenges for  
16 cause?

17 MS. ARMIJO: Yes. Mr. Castellano will do  
18 that.

19 MR. CASTELLANO: The next one is number 33  
20 Ms. Yatsattie. I think she's been dead in the water  
21 since yesterday, frankly, with the bias. I think in  
22 her mind, if you're a member of a gang, you're  
23 guilty. She's against gangs. She's admitted bias.  
24 And yesterday she said she doesn't like criminals.  
25 So she's a pretty easy one.

1 THE COURT: Ms. Duncan, how do the  
2 defendants feel about Ms. Yatsattie?

3 MS. DUNCAN: Your Honor, we feel exactly  
4 the same way. She took every opportunity to express  
5 to the Court that she didn't feel that she could be  
6 a fair and impartial juror in this case. And she  
7 also, in addition to the serious cause challenge,  
8 raised a hardship yesterday because of her religious  
9 beliefs, she cannot spend money over the next two  
10 months during certain hours. So that would impact  
11 on her ability to focus on the evidence, I'm  
12 guessing, because she couldn't buy food and  
13 otherwise take care of herself during that period.

14 THE COURT: All right. The Court will  
15 strike juror number 33, Yatsattie, for cause. Does  
16 the Government, Ms. Armijo, have any further  
17 for-cause challenges?

18 MR. CASTELLANO: Yes, Your Honor. Number  
19 30, Pedro Rodriguez. He's the one whose wife has  
20 previously worked on the case and then was  
21 conflicted off the case. I was a little concerned a  
22 couple times this morning, he testified before the  
23 jury and said, "In my experience," for example, with  
24 gangs, he said, "In my experience, they go through  
25 the paperwork to make sure they check on you and

1 things of that nature."

2 I'm afraid that he's going to bring his  
3 experience into the jury, and if things are  
4 different from his experience versus what the  
5 evidence shows, he's going to persuade the jury with  
6 things that are not in evidence. One of the  
7 comments he said was, he also mentioned substantial  
8 evidence has to be within reason. So when someone  
9 like that with a legal background starts saying  
10 things in the presence of the jury, it gives me  
11 concern. And like I said, a couple of times he  
12 said, "From my experience." So I think he's  
13 starting to already bring his outside experience  
14 into the jury.

15 THE COURT: Ms. Duncan, how do the  
16 defendants feel about Mr. Rodriguez?

17 MS. DUNCAN: Your Honor, the defendants  
18 oppose striking Mr. Rodriguez for cause. He said  
19 that his wife was only briefly on the case and he  
20 knew nothing about it other than she was briefly on  
21 the case. He learned nothing about the facts of  
22 this case.

23 In terms of him answering questions based  
24 on his experience as paralegal, there is nothing  
25 that prohibits him from doing so. This Court is

1 going to instruct the jury at trial that they can  
2 only consider the evidence and the law as the Court  
3 reads it to them. The Government never asked him  
4 about that instruction, so he -- in response to  
5 every question the Court asked him or the parties  
6 asked him, he said he believed he could be fair and  
7 impartial and follow the Court's instructions. So  
8 there is no basis for excusing Mr. Rodriguez for  
9 cause.

10 THE COURT: Anything else you want to add  
11 to that from the Government's standpoint?

12 MR. VILLA: Your Honor -- oh, I'm sorry.  
13 You said the Government.

14 THE COURT: Did you have something else  
15 you wanted to say on that?

16 MR. VILLA: I did, Your Honor, but if you  
17 wanted to hear from the Government, I can wait.

18 THE COURT: Well, I better hear from the  
19 defendants first.

20 MR. VILLA: Your Honor, I think we can  
21 check the court docket. I believe that Ms. Hall was  
22 never appointed to this case. Mr. Rodriguez  
23 indicated that it was with Michael Davis, and we  
24 know that Michael Davis represented Carlos Herrera,  
25 and I have a specific recollection of a phone call



1 in which Mr. Davis called me asking about a second  
2 lawyer because the lawyer he normally liked to use,  
3 Ms. Hall, told him that she had a conflict.

4 I think we don't have to take my word for  
5 it. We can look at the court docket and see if  
6 she'd ever been appointed. Because I think our  
7 records that we have for Mr. Rodriguez, it said it  
8 was Mr. Davis. So it would be associated with  
9 Carlos Herrera. And I think that was confusion in  
10 whatever discussion Mr. Rodriguez had with his wife  
11 that there was a conflict. I think she's saying, "I  
12 couldn't get on the case because I had a conflict."  
13 Short of that, there is no other basis to strike Mr.  
14 Rodriguez.

15 THE COURT: All right. Anything else, Mr.  
16 Castellano?

17 MR. CASTELLANO: I just remember one more  
18 comment which is, he becomes very critical based on  
19 his experience. So once again, you're going to have  
20 one person back there with legal experience who is  
21 going to be changing the standards, is the concern.  
22 When he says, "Well, in my experience this happens  
23 or that happens, so this is what the evidence  
24 showed, but that's not consistent with my  
25 experience, and I'm very critical based on my

1 experience."

2 And so I understand anyone with a legal  
3 background can be on a jury panel, but someone who  
4 is saying this in front of the panel at this stage  
5 already gives me great concern.

6 THE COURT: Well, a lot of the questions  
7 asked about their experience and then elicited,  
8 where did you get it? I thought he was clean. I  
9 thought he told us every time that he wouldn't bring  
10 things into the courtroom and that he would be fair  
11 and impartial, and I don't think he knows anything  
12 about the case, really, from the outside. So I  
13 think he's a pretty clean juror. I'm going to  
14 overrule the for-cause challenge to juror number 30  
15 and leave him on the panel.

16 All right, Ms. Armijo. Does the  
17 Government have any other for-cause challenges?

18 MS. ARMIJO: No, Your Honor. That's it.  
19 Thank you.

20 THE COURT: Thank you, Ms. Armijo.

21 All right. Let's go then to the  
22 defendants. It looks like y'all had some time to  
23 talk. Did y'all agree on some, Ms. Duncan?

24 MS. DUNCAN: Your Honor, we did.

25 THE COURT: Why don't you give me your

1 first one, then.

2 MS. DUNCAN: Our first is number 3, Cindy  
3 Padilla, and we would ask the Court to excuse her  
4 for cause based on her relation with Government  
5 witness Lieutenant Howie from the Dona Ana  
6 Correctional Facility. Ms. Padilla, when we were  
7 speaking at the bench, said that based on her  
8 long-standing professional relationship with  
9 Mr. Howie, that she would believe him over other  
10 witnesses; that she would give him more credibility  
11 than other witnesses who appeared at trial. And for  
12 that reason we think she should be struck for cause.

13 THE COURT: All right. Ms. Armijo?

14 MR. BECK: I think she said that she would  
15 find him -- she finds him credible in her personal  
16 experience. When the Court asked if there was  
17 anything in that relationship that would keep her  
18 from being fair and impartial in this case, she said  
19 no. So I think the Court rehabilitated her. I  
20 don't think she got to the level where she said she  
21 could not be fair and impartial.

22 THE COURT: All right. Ms. Duncan?

23 MS. DUNCAN: Your Honor, I think those are  
24 two separate issues. The question is, the way in  
25 which we're raising it is that the defendants are

1 entitled to have witnesses who will consider each  
2 or -- yeah, jurors who will consider each witness'  
3 testimony on a blank slate, that they won't credit  
4 one witness over another witness based on their own  
5 personal knowledge of that witness. So this  
6 particular juror was fairly consistent that she  
7 would do that in the case of Mr. Howie because of  
8 her relationship with him, that she would give him  
9 the benefit of the doubt that she would not give to  
10 other witnesses in this case.

11 THE COURT: I'm going to ask Ms. Wild or  
12 Ms. Standridge to maybe pull up the testimony as to  
13 number 3. My notes are a little unclear on that. I  
14 certainly have notes that we talked about it here.

15 All right. Let's go to your next one.  
16 I'll come back to that one, Ms. Duncan.

17 MS. DUNCAN: Your Honor, our next would be  
18 juror number 6, Justus Bock, and this is again based  
19 on a conference that we had at the bench. You  
20 recall juror Bock is the person who knew Mr.  
21 Marcantel, one of the alleged victims in this case.  
22 Mr. Marcantel was his coach as a child. He's also  
23 best friends with Mr. Marcantel's son. He has  
24 specific memories of spending time at the Marcantel  
25 home, and Secretary Marcantel told him, "Don't go

1 out after dark. If you see anything odd, you need  
2 to call me or the authorities." He was aware that  
3 Mr. Marcantel at least had concerns about his own  
4 safety based on his job.

5 We understand Mr. Bock is insistent to the  
6 Court that he could be fair and impartial, but under  
7 the circumstances, given that relationship and the  
8 closeness of that relationship and his personal  
9 experiences in the Marcantel home and also as a  
10 potential victim of violence based on Secretary  
11 Marcantel, we would ask the Court to excuse him for  
12 cause. There is just no way that someone with that  
13 kind of connection to an alleged victim can sit  
14 fairly and judge the innocence or guilt of a person  
15 accused of conspiring to murder that person.

16 THE COURT: All right, Mr. Beck.

17 MR. BECK: The Government is opposed. And  
18 Mr. Bock said that it had been at least 10 years  
19 since he'd seen Mr. Marcantel. He hadn't talked to  
20 Mr. Marcantel's stepson in five years, and he was  
21 pretty adamant, after many questions, that he could  
22 be fair and impartial. And in fact, the Court asked  
23 if he'd be biased in favor of the prosecution, and  
24 he said no, he's not with the prosecution.

25 THE COURT: Well, I have to just

1 disbelieve every word he said to us. He just gave  
2 us a clean answer to everything. And it is a little  
3 ancient history. I mean, I know he's a young man,  
4 but it's kind of ancient history. I'm going to  
5 leave him on the panel. If Marcantel had been  
6 murdered or something, maybe that would be a  
7 different situation, but he's alive and well. I  
8 don't know. He just was a very clean juror as far  
9 as every answer he gave us. He just didn't  
10 equivocate on anything. So I'm going to overrule  
11 the for-cause challenge to that.

12 All right, Ms. Duncan.

13 MS. DUNCAN: Our next juror, Your Honor,  
14 would be juror number 16, Thomas Besson, who was  
15 another one at the bench, Your Honor. If you  
16 recall, Mr. Besson read the really inflammatory  
17 article that was in the Albuquerque Journal over the  
18 weekend. He saw the headline and although he  
19 recalled the Court telling him not to read or watch  
20 any kind of news coverage about this case, he  
21 purposely ignored this Court's instructions out of  
22 personal concern for his safety. Having read the  
23 article, he then discussed it with his wife, again  
24 over the Court's instructions not to discuss the  
25 case with anyone. So we have someone, a juror here,

1 who is not going to follow -- he's already  
2 demonstrated he can't follow the Court's  
3 instructions and that he will put his own personal  
4 concerns above his duty as a juror. Additionally,  
5 his overriding concern for his safety raises real  
6 concerns about his ability to presume the men in  
7 this room innocent.

8 THE COURT: You know, he never came back  
9 to it, though. He never once brought up his  
10 concerns about his safety.

11 MS. DUNCAN: He wasn't specifically asked  
12 about them again, Your Honor.

13 THE COURT: But there were a lot of  
14 general questions. I mean, everybody had a chance  
15 to talk about it, and he just didn't -- we didn't  
16 get anything from him.

17 MS. DUNCAN: But I think aside even from  
18 his expressions of safety, which were pretty severe,  
19 he also admitted to intentionally disregarding your  
20 orders, Your Honor.

21 THE COURT: But he also told us that he  
22 could follow orders. He told us he could do that.  
23 There was a gap between the article and the -- when  
24 we sent out the questionnaire.

25 What's your thoughts, Mr. Beck?

1 MR. BECK: Your Honor, the Government  
2 agrees with Your Honor's take on it. There was a  
3 long gap between the jury questionnaire and the  
4 article. The article came out the night before, the  
5 day before the trial, about security concerns. I  
6 think it's a perfectly rational thing to do. You  
7 know, in the course of a 20-page questionnaire, we  
8 had several jurors who simply didn't answer  
9 questions, couldn't remember their answers. So I  
10 think that shows that it was pretty tenuous.

11 Then I do think, as the Court pointed out,  
12 I mean, I think we went over and over the concerns  
13 not only about fear, but just about anxiety in  
14 general. And several people talked multiple times;  
15 people chimed in after the discussion went different  
16 directions; and Mr. Besson really never voiced any  
17 kind of concern at all. At the bench he said he  
18 could set that aside and render a fair verdict based  
19 on the evidence. So I think he's certainly a fair  
20 juror. I think he's one of those who said  
21 originally, not later, that it was anxiety but it  
22 wasn't fear that would keep him from being  
23 impartial.

24 THE COURT: Yeah, he was one of our  
25 cleanest jurors, other than the very first question



1 or second question about whether he knew anything  
2 about the case. And he came up and was very honest  
3 about everything he had done.

4 MS. DUNCAN: May I be heard, Your Honor?  
5 Two points on that. I have two points just to make.  
6 One, he's not a juror who didn't remember the  
7 Court's instructions. We had another juror who said  
8 that. He's someone who remembered and purposefully  
9 disregarded them.

10 The second thing I would say is: We  
11 talked to him at length at the bench about this  
12 issue, so it's not surprising that he wouldn't bring  
13 it up again because we had talked to him for so  
14 long. So it would be perfectly reasonable for him  
15 to think that that topic had been exhausted.

16 THE COURT: Well, I hate to draw that  
17 conclusion.

18 Ms. Jacks.

19 MS. JACKS: I want to sort of reiterate  
20 what Ms. Duncan just said, because he was the  
21 juror -- I questioned him on this and I specifically  
22 asked him, when he saw the headline, did he remember  
23 the Court's instructions not to read media related  
24 to the case, and he said yes, and he read it anyway.

25 And if you go back and look at what his

1 answers were, he said that his concerns for -- his  
2 own personal concerns trumped the instructions that  
3 the Court gave, and he felt free at that point to  
4 disregard the instructions from the Court. And I  
5 think a case where the Court is going to be relying  
6 on limiting instruction, for the jurors to  
7 conscientiously follow limiting instructions, I  
8 think that in Mr. Besson's situation, actions speak  
9 louder than words.

10 The other thing I would say is along the  
11 same lines as what Ms. Duncan said. After what he  
12 said at the bench, I think all of us, all the  
13 defense teams, purposely stayed away from the issue  
14 of fear with Mr. Besson, given his reaction to the  
15 article that was in the paper on Sunday. I mean,  
16 the last thing we wanted to do is, if the Court is  
17 going to proceed with this panel, is make it -- you  
18 know, question somebody like Mr. Besson in the  
19 presence of all the other jurors and make it worse.

20 THE COURT: Well, let me think about  
21 Mr. Besson. He was very clean on some other things,  
22 and he promised us that he would be able to follow  
23 the instructions in this case.

24 Anyone else? Ms. Duncan?

25 MS. DUNCAN: Yes, Your Honor. Our next

1 juror -- make sure we're going in order. Our next  
2 juror would be number 22, Lori Apodaca. Ms. Apodaca  
3 is another juror who responded to the questions  
4 about fear. Mr. Villa questioned her. She said  
5 that she felt that the potential that the fear --  
6 the threat of the fear was very great, that it was  
7 hanging over her head, and she was scared of the  
8 ramifications of her decision. She -- Mr. Villa  
9 asked her if she could put that away and/or it would  
10 be weighing on her mind while she deliberated on the  
11 evidence, and she told him she could not give -- she  
12 could not be sure, she could not give him a 100%  
13 guarantee that she could be fair and impartial  
14 despite her fear in this case. She could not say  
15 100% that her fear would not skew her view of the  
16 evidence and her consideration of the evidence.

17 MS. JACKS: If I can add something? I  
18 think there is an additional issue of cause, because  
19 Ms. Apodaca was somebody that said that -- and very  
20 clearly said and repeatedly said -- that if you know  
21 of a crime and don't stop it, you're guilty of a  
22 crime; and that she feels that principle very  
23 strongly. And that's simply not the law.

24 THE COURT: Well, it is the law. I mean,  
25 it is. I mean, so I thought a lot of that

1 discussion just wasn't very helpful. Because we got  
2 laws that require child abuse to be reported. We've  
3 got misprision of a felon. I mean, I didn't have  
4 any problem with your asking it and exploring it,  
5 but it's a tough area. I didn't think she  
6 disqualified herself on that. I mean, she said, "I  
7 think I can be a fair person. I can look at the  
8 evidence and make a decision based on the evidence.  
9 If I think he's not guilty, I can vote not guilty."

10 Well, I guess the fear factor -- she  
11 couldn't give us 100% that the fear factor would not  
12 influence her, so I'm going to strike juror number  
13 22, Ms. Apodaca, from the panel.

14 MR. CASTELLANO: Your Honor, we'll note  
15 our objection to Ms. Apodaca. She did say she could  
16 follow the instruction and she described herself as  
17 a rational person who could work through the process  
18 to get to a conclusion. And to promise 100% -- I'm  
19 not sure that's the standard we should be looking  
20 at. Because generally speaking, everyone has some  
21 sort of anxiety, and to say, "Well, can you promise  
22 me 100% you'll put everything out of your mind,"  
23 when we ask them to bring in their experiences in  
24 life, that's what people do. So I'm not sure it's  
25 fair to ask somebody 100% to promise that she'll

1 keep everything out of her head. I don't think any  
2 juror actually does that.

3 THE COURT: Well, other than that, she  
4 looked like a good juror. But I'm going to strike  
5 her because of her concerns about not sure that she  
6 could put that out of her mind. Other people did.  
7 They assured us. But she wasn't able to.

8 All right. Any other for-cause  
9 challenges, Ms. Duncan?

10 MS. DUNCAN: Yes, Your Honor. Our next  
11 would be juror number 31, Renee Gothard. And we'd  
12 be asking the Court to excuse her for cause for a  
13 similar reason. The only question that she raised  
14 her hand and offered an opinion on was her fear  
15 about this case, that she was feeling anxiety about  
16 this case, about the consequences of making a  
17 decision in this case. I don't know that -- yeah,  
18 my notes on her are less extensive than Ms. Apodaca,  
19 but again, she was someone who is very concerned  
20 about retaliation or repercussions, and we believe  
21 that that fear -- I mean, that fear really sort of  
22 undermines any kind of presumption of innocence that  
23 she could give to the clients or the defendants in  
24 this case, and therefore, we'd ask that the Court  
25 excuse her for cause.

1 THE COURT: Mr. Beck.

2 MR. BECK: Your Honor, I think she was a  
3 clean juror. I think she raised -- she said  
4 anxious, not fear. She did raise her hand, and when  
5 she did, she said, "Yeah, I feel anxious about it,"  
6 and I think the question was asked, "Could you set  
7 that aside and, you know, render a fair verdict?"

8 And she said, "Yes, I could," very  
9 clearly. I have written in my notes in red "okay"  
10 and I was making the notes in red when we were  
11 talking about the fear.

12 THE COURT: She used the word okay.

13 MR. BECK: That's why I had "Okay."

14 THE COURT: I wrote it, as well. She  
15 said, "I'll be okay," and she did use the word  
16 "anxious," and I think that some have some anxiety  
17 about the case just, as we all know, because of the  
18 complexity of it. There's a lot of defendants here  
19 and some of them are struggling to see how they're  
20 going to make their way, and we'll walk through.  
21 But she said, "I'm okay." She said, "I have to be  
22 here," and she indicated that she could do the task.

23 I think hers was a little different. So  
24 I'm going to overrule the for-cause challenge to  
25 her.

1 All right, Ms. Duncan. Do the defendants  
2 have further for-cause challenges?

3 MS. DUNCAN: We do, Your Honor. This is a  
4 hardship and I'm sorry I skipped over it.

5 THE COURT: That's fine.

6 MS. DUNCAN: It's number 25, Thomas  
7 Hassell.

8 THE COURT: Yeah. Let's put him aside for  
9 the time being. I think we all know his situation.  
10 We'll put him over in the hardship category.

11 MS. DUNCAN: Our next would be number 34,  
12 Lori Huerta, and we both have a cause and a hardship  
13 challenge for her, Your Honor. The cause challenge  
14 is, she's another juror who expressed fear of  
15 retaliation in this case in her questionnaire,  
16 indicating that she would fear retaliation not if  
17 they were found guilty, but when they were found  
18 guilty, which suggested prejudgment of this case.

19 The ground for hardship is: She indicated  
20 that she's the only person working in this entire  
21 region of the state, that there is no one else that  
22 can cover her. It wasn't just in her office. It  
23 was all in the region, and that that would be a  
24 hardship for her work. And for those reasons we  
25 would ask the Court to excuse her.

1 THE COURT: All right. What's your  
2 thoughts, Mr. Beck?

3 MR. BECK: This was an oversight on our  
4 part. We agree with the defense on Ms. Huerta.

5 THE COURT: Well, on what basis?

6 MR. BECK: Not on the hardship basis, but  
7 on the cause basis. I think she said, "I would be  
8 in fear when coming to a verdict," or something  
9 along those lines. That's not a direct quote.

10 THE COURT: Well, but you're looking at  
11 the questionnaire. I don't think she said it here  
12 in the courtroom; she said it in the questionnaire.  
13 And she didn't say that it would keep her from being  
14 fair and impartial. I don't think any of us have  
15 any notes that indicate that she said that it would  
16 keep her from being fair and impartial, that she  
17 couldn't reach a verdict.

18 MR. BECK: Okay. Yeah, that was from the  
19 questionnaire. I'm sorry. As we were talking about  
20 it, that stuck out. So I think Your Honor is  
21 correct. I didn't recall her personally saying that  
22 in court, and so --

23 THE COURT: I don't think she did.

24 MR. BECK: Right. I don't think she did.

25 THE COURT: I have clean on her, other



1 than the hardship. I agree with the hardship.

2 What's your thoughts on the hardship?

3 MR. BECK: I think the hardship -- I think  
4 that I think there's a number of people putting a  
5 hardship on this. I think hers is significant, that  
6 she seems to be the only person in the region that  
7 can do it. I also tend to think that sometimes  
8 people have a skewed view of their importance. I  
9 don't mean that -- sorry, I don't mean that  
10 disrespectfully. I'm sure my wife may say the same  
11 thing about me. But I think that given the Court's  
12 rulings, or at least putting off to the side some of  
13 the other hardships, which I think are probably  
14 greater hardships, I think that this would be one  
15 that falls -- if I'm using a scale, I would put the  
16 restaurant owner with six employees as more of a  
17 hardship than Ms. Huerta, if that makes sense.

18 THE COURT: Well, I'll keep her open and  
19 think about hardship sort of collectively here, but  
20 I'm not inclined to grant it on her. Hers seemed to  
21 be a little bit more dire at the beginning of the  
22 voir dire and got a little less as we went along.  
23 It was more that she just didn't know how they were  
24 going to do it. It didn't seem to me that she ever  
25 said they couldn't do it. She said here yesterday,

1 didn't know exactly how she was going to do it.

2 All right. Ms. Duncan, do the defendants  
3 have any further for-cause challenges?

4 MS. DUNCAN: We do, Your Honor. The next  
5 would be number 39, Marie Tighe. Ms. Tighe is  
6 another juror who had read the article about this  
7 case, and we talked to her up at the bench. She  
8 indicated that she was unable to be fair after  
9 reading the article. She recalled great details  
10 about it. She felt that, having read the article,  
11 that the defendants were -- in particular Mr.  
12 Baca -- were capable of doing the crime and probably  
13 did do it. She was honest that she could not be  
14 fair and impartial. She based that opinion on the  
15 fact that they were already in prison, committed  
16 crimes, probably involved in other murders. She  
17 said she honestly couldn't presume defendants  
18 innocent. She told the Court that she was biased  
19 for the Government, that she had in mind that the  
20 defendants were already guilty, and she told the  
21 Court she could not follow instructions to be fair.

22 I understand that late yesterday you voir  
23 dired her, and she said that if you told her she had  
24 to be fair, she would be fair. But then again, this  
25 morning when I was questioning her, she indicated

1 again that she didn't think she could be fair; that  
2 she thought the fact that the defendants were in a  
3 gang -- she couldn't be fair, she could not give  
4 them their constitutional presumption of innocence  
5 in this case.

6 THE COURT: All right. Mr. Beck.

7 MS. DUNCAN: I'm sorry. She also -- she's  
8 another juror who expressed fear of retaliation.

9 THE COURT: Mr. Beck?

10 MR. BECK: Your Honor, I think this one is  
11 a close call. I agree with Ms. Duncan's assessment  
12 of yesterday entirely. I think today the  
13 Government's reading was a little bit different. I  
14 think today she was on the scale of anxious, but I  
15 think from what I understood her to say today, she  
16 could follow the Court's instruction and render a  
17 fair verdict.

18 So this one is really -- I mean, it's one  
19 that is tough for us to say. I think she's one that  
20 causes concern, but I don't know that she rose to  
21 the level of some of the other jurors who expressed  
22 fear. So I guess that's my lawyerly answer. I  
23 don't think we can agree to cause for her.

24 THE COURT: Well, I'm going to strike  
25 juror number 39, Maria Tighe, for cause. I do think

1 that she was the one who I think indicated that the  
2 article colored her perception and would make it  
3 more difficult for her to be impartial. She said it  
4 would make it more difficult for her to consider the  
5 evidence fairly between the Government and defense.  
6 She didn't seem impartial to Mr. Baca in particular,  
7 and then she joined Mr. Baxa in his comments. So  
8 the fact that she joined Mr. Baxa concerns the  
9 Court. So I'm going to strike juror number 39,  
10 Marie Tighe.

11 All right. Ms. Duncan, do the defendants  
12 have any other for-cause challenges?

13 MS. DUNCAN: Your Honor, we have two more.  
14 The first one is number 48, Dana Eiffert. I'm  
15 sorry. We have three more. But the first one is  
16 Dana Eiffert.

17 If you recall, Your Honor, we talked to  
18 Mr. Eiffert at the bench yesterday, and he told us  
19 about his friend who had been killed in Albuquerque  
20 less than a year ago. And if you recall, he got  
21 quite emotional about it. And he felt that based on  
22 that experience, he does not like criminals. He  
23 couldn't give 100% assurances that he could be fair,  
24 that he felt that he was biased in favor of the  
25 Government based on that experience, that he didn't

1 think he could give the defendants the benefit of  
2 the presumption of innocence; that he thought that  
3 the courts were too lenient.

4 And then today when the Court was  
5 questioning him personally, he gave you the same  
6 answers. I think he's been very consistent and  
7 honest about his bias against the defendants in this  
8 case. He's never given any indication that he could  
9 be fair and impartial. So we'd ask the Court to  
10 strike him for case.

11 THE COURT: Mr. Beck? Mr. Castellano?

12 MR. CASTELLANO: Your Honor, I don't think  
13 anyone ever put enough of a record together on him.  
14 He said he may be partial. He never committed one  
15 way or the other. Nobody locked him into an answer  
16 about where he would land on things. So most of  
17 these defendants -- or most of these people on the  
18 venire say things like that, but ultimately when we  
19 ask them, "Will you follow the Court's instruction?"  
20 they say yes.

21 We didn't get that far with him. We just  
22 got as far as him saying, "I may be partial," but he  
23 was not definite on that.

24 THE COURT: Well, my note said rather  
25 definitively that he cannot be fair and impartial;

1 he would be biased in favor of the Government; he  
2 could not promise to be impartial. I don't think we  
3 need him on the jury, so I'm going to strike juror  
4 number 48, Dana Eiffert.

5 Do you have another for cause?

6 MS. DUNCAN: The next is hardship. It is  
7 number 51, Christopher Gallegos. If Your Honor  
8 recalls, this is the teacher. He teaches the two AP  
9 courses in Albuquerque.

10 THE COURT: He looked like he was warming  
11 up for the idea of serving on the jury, didn't he.

12 MS. DUNCAN: Well, he definitely got over  
13 his own hardship. He was able to make  
14 accommodations to continue his accreditation until  
15 July, but he continued to be concerned about the  
16 impact it would have on his high school students,  
17 particularly the ones that are taking his AP  
18 government class, because he had had less than a  
19 month to teach them, and that would leave them  
20 without a qualified and certified instructor for two  
21 months, and then they would have to take their  
22 exams. So he was worried particularly about that  
23 case, but about the other case. So I understand  
24 it's not a hardship on Mr. Gallegos, but it's  
25 certainly a hardship on high school students who are

1 attempting to get into college and to have the kind  
2 of background that they need to get into the  
3 colleges that they would want to.

4 So on their behalf, we would ask the Court  
5 to excuse Mr. Gallegos for hardship.

6 THE COURT: How does the Government feel,  
7 Mr. Castellano?

8 MR. CASTELLANO: We have a list of people  
9 who have more extreme hardship than him are kind of  
10 on this waiting list. I agree with the Court. I  
11 think as time went on, he warmed up to the idea of  
12 serving. He said he would be worried about work,  
13 but he could serve. Obviously, his students would  
14 suffer, which I think would be unfortunate,  
15 especially if you have a good teacher, but we can't  
16 focus on the students. It's not the students'  
17 hardship that counts; it's the jurors' hardships  
18 that count.

19 Ultimately he said he was worried but he  
20 could make it work.

21 THE COURT: Well, do you want to oppose  
22 the for cause or do you want to put him on the  
23 hardship list and let's take a look at him in a  
24 minute?

25 MR. CASTELLANO: Oppose, Your Honor. I

1 think if we're looking at the other ones, they're  
2 going to leave before he does, anyway. I would  
3 oppose that.

4 THE COURT: I think he has less hardship  
5 than most. I have confidence in APS finding a  
6 substitute there. So I'm going to overrule the  
7 for-cause challenge.

8 You said you had one more?

9 MS. DUNCAN: I have one more, Your Honor,  
10 and that would be Mr. Sean Burton, juror number 58.  
11 And it is based on Mr. Burton's comments. Mr. Villa  
12 was asking the jurors about the Fifth Amendment  
13 right not to testify. Mr. Burton said that if he  
14 was innocent, that he would testify; he said he  
15 would look at a defendant's decision not to testify  
16 negatively, and that he absolutely would factor in a  
17 defendant's decision not to testify in deciding  
18 whether a defendant was innocent or guilty. And so  
19 for that Fifth Amendment grounds we would ask the  
20 Court to excuse him for cause.

21 THE COURT: My notes just don't reflect  
22 him saying that. I'll see if Ms. Wild can find it,  
23 but I'm just not showing -- I know he talked about  
24 some things, but I don't have it.

25 What's your thoughts, Mr. Castellano? Are



1 you doing this one?

2 MR. CASTELLANO: Yes, Your Honor.

3 I don't remember specifically. I remember  
4 something along the lines that were just stated. I  
5 think if you put a combination of that issue with  
6 hardship, I think he would be a cause challenge.  
7 He's got the business, he has the three kids, one of  
8 them is in lacrosse, he will be traveling pretty  
9 soon. I think the challenge there would be tougher.  
10 But I think in combination, when you put what Ms.  
11 Duncan said in addition to the other factors, I  
12 think we're at cause for him.

13 THE COURT: Well, let me see if --

14 MS. JACKS: May I be heard?

15 THE COURT: Yes.

16 MS. JACKS: Your Honor, I'm just looking  
17 at my notes, and it's from Mr. Villa's questioning  
18 this afternoon regarding the right to remain silent.  
19 And in my notes, what Mr. Burton said is that he  
20 needs to hear from the defendants; if you're  
21 innocent, you'll take the stand. And I think he  
22 said -- this is a quote -- that absolutely that  
23 would come into play. So --

24 THE COURT: All right. Let me see if I  
25 can check the transcript. If y'all -- if that many

1 of you had it in your notes, then maybe I just  
2 didn't get it down. But I'm looking at -- I drew a  
3 line through his box, and I had him talking about  
4 things, the ones that --

5 THE CLERK: He did say that.

6 MR. CASTELLANO: Those sound fair, Your  
7 Honor.

8 THE COURT: Well, if y'all are in  
9 agreement, I just didn't get good notes on that one.  
10 So I'll strike juror number 58, Sean Burton.

11 MS. DUNCAN: That's our final challenge,  
12 Your Honor.

13 THE COURT: Are all defendants in  
14 agreement with Ms. Duncan? Did y'all work and those  
15 are all the defendants' ones?

16 MR. VILLA: Yes, Your Honor.

17 THE COURT: All right. Let me go back to  
18 Cindy Padilla. Did you find --

19 THE CLERK: I do have it here. Hold on.

20 THE COURT: Let me come down here and look  
21 at the screen to see what she said.

22 All right. I'm going to try to read this  
23 transcript the best I can here. But I asked her --  
24 this is all at the bench, you remember, right after  
25 lunch. I said, "Would you remind me your name?"

1 She said "Cindy Padilla."

2 "What juror number are you?"

3 "Number 3."

4 "Ms. Padilla, how are you doing today?

5 Who do you know?"

6 And she said -- is it Pat Howie? Is that  
7 his first name? Pat Howie? At the detention  
8 center.

9 "You know him because you work there, as  
10 well?"

11 "Yes."

12 "Do you socialize?"

13 "No, I have a conversation with him once  
14 in a while."

15 "And what's your opinion, what is your  
16 thoughts about Mr. Howie?"

17 "I think he's a good person. I like him."

18 "If he takes the stand" -- this is me  
19 asking questions -- "if the Government calls him as  
20 a witness, would you, because of your relationship  
21 with him, believe what he says, or would you listen  
22 to him and judge him as a witness just like any  
23 witness in the case?"

24 She said, "That's a hard question. I  
25 would believe what he said."

1 "You'd probably believe what he says even  
2 if the defendants are saying don't believe him? Do  
3 you think you'd still believe him just because of  
4 your relationship with him?"

5 "Yes."

6 "Given that he's going to be a Government  
7 witness, do you think you can be fair and impartial  
8 in this case?"

9 "Yes, I think so."

10 This is Mr. Beck now. "Your Honor, thank  
11 you. Okay. Where do you currently work?"

12 "I work there and I still --"

13 "Do you have contact with staff? How  
14 often do you have contact?"

15 "I'm real good friends with one of the  
16 secretaries there."

17 "Based on your relationship with  
18 Lieutenant Howie, would you tend to believe him?  
19 Based on your relationship with Lieutenant Howie,  
20 you would tend to believe what he has said; is that  
21 correct?"

22 He nods.

23 "So you would presume him to be truthful?  
24 Is that what you're saying?"

25 "I think so, yes."

1 "More so than other witnesses who didn't  
2 know -- who showed up to testify?"

3 "Yeah, because I know him."

4 All right. Let's see. We've got Ms.  
5 Bhalla. You went in the background, so I'm skipping  
6 the background about the sheriff's office and stuff.  
7 So you just asked about where he worked and that  
8 stuff, so I'm going to skip that.

9 All right. This is Mr. Villa. You just  
10 asked about the extent of contacts, Mr. Villa. So  
11 is that where it stops?

12 Then Mr. Jewkes -- Mr. Jewkes said, "The  
13 judge is going to give you instructions. In this  
14 case would you be able to follow the judge's  
15 instructions to the jury?"

16 "Yes, I think so."

17 "If one of those instructions tells us how  
18 much weight to give to certain people's testimony,  
19 including Mr. Howie's, will you be able to follow  
20 those instruction and give that weight to that  
21 witness' testimony?"

22 "I think so, yes."

23 And I think that was that.

24 Okay. This is Ms. Duncan now. She says,  
25 "I trust him because I know him. I'm not saying

1 that, but I just know him more on a professional  
2 level."

3 It's hard to read the transcript. "But  
4 you find him to be a truthful person; is that  
5 correct?"

6 "Correct."

7 "So your experience, having worked with  
8 him, will determine how you view him as a witness;  
9 correct?"

10 "Yes."

11 Then I asked Ms. Bhalla if she had  
12 anything, Mr. Jewkes?

13 Well, I don't think we have any confidence  
14 that she's not going to come in with a presumption  
15 that he's truthful. And if she's going to come with  
16 that presumption and not treat him like any other  
17 witness, I'm going to strike Ms. Padilla for cause.

18 I'm going to strike juror number 16,  
19 Tommie Besson, for cause. Ms. Jacks and Ms. Duncan  
20 make a good point. He had been given instructions,  
21 and it's not like, oh, I forgot, or something. He  
22 didn't do it. Seemed like a good juror otherwise,  
23 but that's a pretty big test and he didn't pass it.

24 If we want to revisit, looks like we've  
25 got some extra for cause, and y'all had agreed on a

1 couple, and I said, well, I wanted to think about  
2 them. The ones that I recall -- correct me -- if I  
3 remember, y'all agreed on Mr. Sanchez for cause.  
4 Let me go back. If y'all feel strongly about the  
5 depression of Mr. Brimmer, I could take him off. If  
6 y'all feel -- I guess I'm just a little hesitant to  
7 do it. But if y'all feel it. Everybody still want  
8 Mr. Brimmer off?

9 MR. BECK: Yes, Your Honor. I think our  
10 concern was the same as Mr. Villa's.

11 THE COURT: All right. Is that still a  
12 top priority of getting him off?

13 MS. DUNCAN: Yes, Your Honor.

14 MR. VILLA: Yes, Your Honor.

15 THE COURT: All right. So Mr. Brimmer  
16 was --

17 THE CLERK: 32.

18 THE COURT: I'll take Mr. Brimmer off.

19 Let take -- let's look at these for cause  
20 folks. Y'all had agreed on Sanchez. Is that your  
21 top one or --

22 MS. JACKS: What number is that?

23 THE COURT: 38.

24 MR. BECK: That's the Government's top  
25 one.

1 THE COURT: Y'all had both agreed on that,  
2 I believe last night and again today. Do you want  
3 to knock him off?

4 MS. JACKS: That's the restaurant owner.  
5 I think that's a really legitimate hardship.

6 MR. VILLA: Yes, Your Honor.

7 THE COURT: Y'all got a little softer  
8 heart. I have to tell people "No" a lot. That's  
9 part of my job, so...

10 MR. VILLA: You never said no to me,  
11 Judge.

12 THE COURT: I'm beginning to worry about  
13 your memory, Mr. Villa. I'll say this. I always  
14 felt guilty when I did it.

15 I think y'all also agreed on  
16 Mr. Youngblood. Now, he's from Hobbs. Do you think  
17 he can just gut it through, a good old Hobbs Eagle?

18 MR. BECK: I think every one of the jurors  
19 was impressed with your jack-of-all-trades  
20 childhood, but I don't think they're all like you,  
21 and I think this would be a real hardship on  
22 Mr. Youngblood.

23 THE COURT: Is that y'all's next hardship?

24 MS. JACKS: What about Ms. Huerta?

25 MR. VILLA: I'm sorry, Your Honor, did you



1 rule on Mr. Sanchez?

2 THE COURT: I did. I took him out.

3 MR. BECK: I think we're going back over  
4 the hardships.

5 THE COURT: I'm going back on the  
6 hardships.

7 MR. BECK: We're now talking about  
8 Mr. Youngblood, juror number 42.

9 THE COURT: You all felt more strongly  
10 about Ms. Huerta than Mr. Youngblood?

11 MS. DUNCAN: Why don't we do them both,  
12 Your Honor? That would be my recommendation. I  
13 think we have both Ms. Huerta and Mr. Youngblood.  
14 That would be the last of our stipulated list.

15 THE COURT: That would leave Mr. Hassell  
16 on, so you know we've got the pecan farmer. So of  
17 the three, Hassell is the one that's out?

18 MR. BECK: I think that's right, Your  
19 Honor. I think for the Government, it would go  
20 Youngblood, Huerta, Hassell, in that order, and  
21 Youngblood and Huerta are far closer than  
22 Mr. Hassell.

23 MS. JACKS: Can we just have a minute to  
24 confer, Your Honor, among the defendants?

25 THE COURT: Sure.

1 MS. JACKS: Your Honor, there seems to be  
2 some confusion. Can we get all of them? All three?

3 THE COURT: Well, I don't think so. I  
4 think I need to probably bring it to a close and  
5 tell somebody they're just going to have to serve on  
6 the jury. So I'll give you a couple more hardships  
7 if you want it.

8 MS. DUNCAN: Mr. Youngblood, we agree with  
9 the Government, is our first.

10 THE COURT: All right. So let's take  
11 Mr. Youngblood out.

12 MS. DUNCAN: I'm just finding out the  
13 consensus on the two and three.

14 THE COURT: Just so everybody is on the  
15 same page, is everybody showing that if we take one  
16 more out, then we've got our full 40 to do the  
17 peremptories? Everybody in agreement here?

18 MS. DUNCAN: That's my count, Your Honor.

19 MR. BECK: I think that's right, Your  
20 Honor.

21 THE COURT: And you wanted Huerta? Is who  
22 you wanted?

23 MR. BECK: Your Honor, as I said, I  
24 thought that that was the our order. I think  
25 Youngblood had --

1 THE COURT: Is that yours?

2 MS. DUNCAN: We agree.

3 THE COURT: So we'll just leave Hassell in  
4 the mix, then?

5 MR. BECK: That's agreed.

6 MS. DUNCAN: That's correct.

7 THE COURT: All right. And everybody is  
8 counting the same way that Ms. Wild and I are, then,  
9 with Ms. Huerta coming out.

10 All right. So let me confirm the  
11 for-cause challenges. Three of these were struck  
12 earlier in the day this morning. So I will mention  
13 those, just so your sheets are clear, but I think  
14 we're all clear. And then I'll also mention the  
15 ones that we just struck.

16 So I'm just mentioning the ones that are  
17 struck. Juror number 1, Diane E. Moore. Juror  
18 number 3, Cindy C. Padilla. Juror number 10, Mark  
19 S. Oldknow. Juror number 11, Sara Sue Decramer.  
20 Juror number 13, Adrian A. Gonzales. Juror number  
21 15, Joseph Mullings. Juror number 16, Tommie D.  
22 Besson. Juror number 17, Carlton W. Hefner. Juror  
23 number 19, Carol M. Holt. Juror number 22, Lori L.  
24 Apodaca. Juror number 32, Mason E. Brimmer. Juror  
25 number 33, Clarissa B. Yatsattie. Juror number 34,

1 Lori Akiye Huerta. Juror number 38, Edric C.  
2 Sanchez. Juror number 39, Marie F. Tighe. Juror  
3 number 40, Eric L. Billings. Juror number 42, Scot  
4 A. Youngblood. Juror number 43, Jan Paige  
5 Dickerson. Juror number 45, Cruz Chavira. Juror  
6 number 47, Roger A. Bates. Juror number 48, Dana A.  
7 Eiffert. Juror 49, Claudia L. Chavez. Juror number  
8 53, Elizabeth S. Winston. Juror number 58, Sean M.  
9 Burton. Juror number 59, Jason E. Fink. And juror  
10 number 65, Rowen Baxa.

11 Ms. Wild has confirmed that that's the  
12 Court's challenges. Have I correctly confirmed from  
13 the Government's standpoint, Mr. Beck.

14 MR. BECK: Yes, sir, Your Honor.

15 THE COURT: How about from the defendants?  
16 Ms. Duncan.

17 MS. DUNCAN: Yes, Your Honor.

18 THE COURT: All right. Everybody in  
19 agreement, those are the for cause?

20 All right. I think what I am going to  
21 do -- I don't know. Do you want to go right into  
22 peremptories?

23 MS. JACKS: I was going to say, I think  
24 the defense needs to confer.

25 THE COURT: Why don't we do this? This is

1 what I'm proposing to do. I need to go see some  
2 jurors that haven't been in the courtroom. Okay?  
3 Let me see. I'm going to go talk to wave 3 and let  
4 them go and thank them for their service, tell them  
5 what we've done, and we think we're going to be able  
6 to get a jury out of the group 1. Anybody have any  
7 problem with that, let them permanently go? Mr.  
8 Beck?

9 MR. BECK: No, Your Honor.

10 THE COURT: Does that work for the  
11 defendants?

12 MS. DUNCAN: It does, Your Honor.

13 THE COURT: That will buy y'all a little  
14 bit of time to work on your peremptories, and I'll  
15 come back in.

16 MS. DUNCAN: Your Honor, can I ask for a  
17 point of clarification? So the jury will be sat in  
18 the order that they appear, so everybody moves up  
19 and stays in the same order.

20 THE COURT: They're not going to be in  
21 here while you're doing it.

22 MS. DUNCAN: No, I mean the order that the  
23 peremptories are seating them. I'm sorry, the order  
24 of the peremptories in seating them.

25 THE COURT: The first 18 unstruck,

1 unchallenged jurors will be seated in the order in  
2 which they are in the courtroom. Does that make  
3 sense?

4 MS. DUNCAN: Yes, it does.

5 THE COURT: Everybody understand that?  
6 Mr. Beck? Ms. Jacks?

7 MS. JACKS: Yes.

8 THE COURT: All right. We'll be in recess  
9 for a few minutes.

10 (The Court stood in recess.)

11 THE COURT: Let's go on the record. Let  
12 me review with you the rules for peremptory  
13 challenges that we're about to take up. There will  
14 be six rounds. The Government will lead off a  
15 round, then we'll alternate who leads off the round.  
16 The Government will have one peremptory challenge in  
17 each round. The defendants will have two in rounds  
18 1 through 4, and then the last two rounds they will  
19 have one in each round.

20 After we have confirmed the jury and also  
21 confirmed the four tentative alternates, I'll give  
22 three peremptory challenges to each side to exercise  
23 against the alternates only. Does everyone  
24 understand how we're going to do it? Mr. Beck?

25 MR. BECK: Yes, Your Honor.

1 THE COURT: And Ms. Jacks, are you  
2 speaking for the defendants?

3 MS. JACKS: I am. We have one request  
4 before we exercise our peremptories.

5 THE COURT: You may.

6 MS. JACKS: And that is, given the  
7 negative publicity and the comments made to the  
8 jurors in the jury room about the anonymous jury and  
9 to not let their identity be known because of safety  
10 concerns, we're requesting five additional  
11 peremptory challenges.

12 THE COURT: Well, that will be denied. We  
13 discussed that early on. But I understand the  
14 reason for the request.

15 All right. Everybody ready to go?

16 MS. DUNCAN: Your Honor, a quick question.  
17 In terms of exercising our peremptory, do we need to  
18 go in numerical order?

19 THE COURT: You do not. You can go  
20 anywhere in the panel.

21 All right. Remember, there are six  
22 rounds, and the Government has six peremptory  
23 challenges. The defendants have 10 peremptory  
24 challenges. The Government will lead off in round  
25 1.

1 Mr. Beck, are you going to be doing the  
2 peremptories?

3 MR. BECK: Ms. Armijo.

4 THE COURT: Oh, Ms. Armijo? All right.  
5 So the Government leads off round 1, and has one  
6 peremptory challenge in round 1, its first overall  
7 peremptory challenge. The defendants have two  
8 peremptory challenges in round 1, their first and  
9 second peremptory challenges.

10 Ms. Armijo, how does the Government  
11 exercise its first and only peremptory challenge for  
12 round 1?

13 MS. ARMIJO: We will go with number 7.

14 THE COURT: Juror number 7, Tillie H.  
15 Montes, will be struck by the Government exercising  
16 its first peremptory challenge. That will conclude  
17 the Government's participation in round 1.

18 The defendants have two in round 1, its  
19 first and second peremptory challenges. Ms. Duncan,  
20 how do the defendants exercise their first  
21 peremptory challenge in round 1 and their first  
22 overall peremptory challenge?

23 MS. DUNCAN: Your Honor, our first  
24 peremptory is for juror number 6, Justus Bock.

25 THE COURT: Juror number 6, Justus M. Bock



1 to be struck by the defendants exercising their  
2 first peremptory challenge. The defendants have one  
3 more peremptory challenge, their second overall  
4 peremptory challenge in round one. Ms. Duncan, how  
5 do the defendants exercise their second peremptory  
6 challenge and their last peremptory challenge in  
7 round 2?

8 MS. DUNCAN: Your Honor, our next  
9 peremptory would be to juror number 31, Renee  
10 Gothard.

11 THE COURT: Juror number 31, Renee L.  
12 Gothard, will be struck by the defendants exercising  
13 their second peremptory challenge and final  
14 peremptory challenge in round 2 (sic). That  
15 concludes the defendants' participation in round 1.

16 We go to round 2. That concludes round 1.  
17 We go to round 2. The defendants lead off round 2.  
18 The defendants have two peremptory challenges in  
19 round 2, their third and fourth overall peremptory  
20 challenges. The Government has one peremptory  
21 challenge in round 2, its second overall peremptory  
22 challenge.

23 Ms. Duncan, how do the defendants exercise  
24 their third peremptory challenge and their first  
25 peremptory challenge in round 2?

1 MS. DUNCAN: Juror number 20, Carol  
2 Garnanez.

3 THE COURT: Juror number 20, Carol A.  
4 Garnanez, will be struck by the defendants  
5 exercising their third peremptory challenge.

6 The defendants have one more peremptory  
7 challenge in round 2, their fourth overall  
8 peremptory challenge, their final peremptory  
9 challenge of round 2.

10 Ms. Duncan, how do the defendants exercise  
11 their fourth overall peremptory challenge?

12 MS. DUNCAN: Your Honor, number 24, Sandra  
13 Whitehead.

14 THE COURT: Juror number 24, Sandra  
15 Whitehead, will be struck by the defendants  
16 exercising their fourth peremptory challenge, their  
17 second peremptory challenge of round 2 and their  
18 final peremptory challenge of round 2.

19 The Government has one -- that ends the  
20 defendants' participation in round 2. The  
21 Government has one peremptory challenge in round 2,  
22 its second overall peremptory challenge. Ms.  
23 Armijo, how does the Government exercise its only  
24 peremptory challenge for round 2?

25 MS. ARMIJO: Juror number 12, Ms. Cator.

1 THE COURT: Juror number 12, Sheryl J.  
2 Cator, will be struck by the plaintiff exercising  
3 its second peremptory challenge, its only peremptory  
4 challenge in round 2. That concludes the  
5 Government's participation in round 2, and it  
6 concludes round 2.

7 We go to round 3. The Government leads  
8 off round 3. The Government has one peremptory  
9 challenge in round 3, its third overall peremptory  
10 challenge. The defendants have two peremptory  
11 challenges in round 3, their fifth and sixth  
12 peremptory challenges.

13 Ms. Duncan, how do the defendants -- Ms.  
14 Armijo, how does the Government exercise its only  
15 peremptory challenge for round 3 and its third  
16 overall peremptory challenge.

17 MS. ARMIJO: Juror number 14, Mr. Compton.

18 THE COURT: Juror number 14, Lawrence E.  
19 Compton, will be struck by the Government exercising  
20 its third peremptory challenge, its only peremptory  
21 challenge in round 3. That concludes the  
22 Government's participation in round 3.

23 The defendants have two peremptory  
24 challenges in round 3, their fifth and six overall  
25 peremptory challenges.

1 Ms. Duncan, how do the defendants exercise  
2 their fifth peremptory challenge, their first  
3 peremptory challenge for round 3?

4 MS. DUNCAN: Your Honor, juror number 18,  
5 Seth Graves.

6 THE COURT: Juror number -- give me that  
7 number again.

8 MS. DUNCAN: It was juror number 18, Seth  
9 Graves.

10 THE COURT: Juror number 18, Seth E.  
11 Graves, will be struck by the defendants exercising  
12 their fifth peremptory challenge. That's their  
13 first peremptory challenge of round 3. They have  
14 one more peremptory challenge in round 3, their  
15 sixth overall peremptory challenge.

16 Ms. Duncan, how do the defendants exercise  
17 their sixth and final peremptory challenge of round  
18 3 and their sixth overall peremptory challenge?

19 MS. DUNCAN: Your Honor, juror number 41,  
20 Aron Phillips.

21 THE COURT: Juror number 41, Aron George  
22 Phillips, will be struck by the defendants  
23 exercising their sixth overall peremptory challenge,  
24 their second peremptory challenge in round 3, their  
25 final peremptory challenge in round 3.

1 That concludes the defendants'  
2 participation in round 3. It concludes round 3.

3 We go to round 4. In round 4, the  
4 defendants lead off round 4. The Government has one  
5 peremptory challenge in round 4, its fourth overall  
6 peremptory challenge. The defendants have two  
7 peremptory challenges in round 4. This is the last  
8 round. The defendants have two peremptory  
9 challenges, so this will be their seventh and eighth  
10 peremptory challenges. The defendants lead off this  
11 round.

12 Ms. Duncan, how do the defendants exercise  
13 their first peremptory challenge of round 4, their  
14 seventh overall peremptory challenge?

15 MS. DUNCAN: Your Honor, juror 36, Venesee  
16 Taylor.

17 THE COURT: Juror number 36, Venesee  
18 Taylor, will be struck by the defendants exercising  
19 their seventh peremptory challenge, their first  
20 peremptory challenge of round 4.

21 The defendants have one more peremptory  
22 challenge in round 4, their eighth overall  
23 peremptory challenge, and this is the final round  
24 that they have two peremptory challenges.

25 Ms. Duncan, how do the defendants exercise

1 their eighth overall peremptory challenge and final  
2 peremptory challenge of round 4?

3 MS. DUNCAN: 44, Shannon Ortiz.

4 THE COURT: Juror number 44, Shannon M.  
5 Ortiz, will be struck by the defendants. That is  
6 the defendants' eighth peremptory challenge. That's  
7 their second peremptory challenge in round 4. That  
8 concludes the defendants' participation in round 4.

9 The Government has one peremptory  
10 challenge in round 4, its fourth overall peremptory  
11 challenge.

12 Ms. Armijo, how does the Government  
13 exercise its fourth peremptory challenge and its  
14 only peremptory challenge in round 4.

15 MS. DUNCAN: Your Honor, juror number 21,  
16 Dennis McNair.

17 THE COURT: Dennis McNair will be struck  
18 by the Government exercising its fourth peremptory  
19 challenge, its final peremptory challenge of round  
20 4.

21 That concludes the Government's  
22 participation in round 4. It concludes round 4.

23 We go to round 5 where the Government  
24 leads off round 5. The Government has one  
25 peremptory challenge in round 5, its fifth overall

1 peremptory challenge. The defendants have one  
2 peremptory challenge in round 5, their ninth overall  
3 peremptory challenge. This is a round in which they  
4 have only one peremptory challenge.

5 Ms. Duncan, how do the -- let's see. The  
6 Government leads off. You get the Government's?

7 THE CLERK: Yes.

8 THE COURT: Okay. I got your fifth, so  
9 it's the defendants' ninth peremptory challenge and  
10 its only peremptory challenge for round 5.

11 MS. DUNCAN: If we could just have a  
12 moment, Your Honor?

13 THE COURT: You may.

14 (A discussion was held off the record.)

15 THE COURT: Hold on a second. Let me make  
16 sure that round 5 -- the Government leads off round  
17 5. Let me make sure. Okay.

18 So the Government leads off round 5. The  
19 Government has one peremptory challenge in round 5,  
20 its fifth overall peremptory challenge.

21 So Ms. Armijo, how does the Government  
22 exercise its fifth and only peremptory challenge for  
23 round 5?

24 MS. ARMIJO: Number 30, Mr. Rodriguez.

25 THE COURT: All right. Juror number 30,

1 Pedro J. Rodriguez, will be struck by the Government  
2 exercising its fifth peremptory challenge.

3 MS. JACKS: Was that number 30?

4 THE COURT: That was juror number 30, and  
5 its only peremptory challenge for round 5. That  
6 concludes the Government's participation in round 5.

7 The defendants have one peremptory  
8 challenge in round 5, their ninth overall peremptory  
9 challenge.

10 Ms. Duncan, how do the defendants exercise  
11 their ninth peremptory challenge and their only  
12 peremptory challenge for round 5?

13 MS. DUNCAN: Juror number 25, Thomas  
14 Hassell.

15 THE COURT: Juror number 25, Thomas Gene  
16 Hassell, will be struck by the defendants exercising  
17 their ninth peremptory challenge and their only  
18 peremptory challenge in round 5.

19 That concludes the defendants'  
20 participation in round 5. It concludes round 5.

21 We go to round 6, which is the final  
22 round. The defendants lead off the final round and  
23 they have one peremptory challenge, their tenth  
24 overall peremptory challenge, and their last  
25 peremptory challenge. The Government has one



1 peremptory challenge, their sixth overall peremptory  
2 challenge.

3 Ms. Duncan, how do the defendants exercise  
4 their only peremptory challenge for round 6, their  
5 tenth overall peremptory challenge, and their last  
6 peremptory challenge to the jurors?

7 MS. DUNCAN: Your Honor, it's juror number  
8 2, Veronica Benavidez.

9 THE COURT: Juror number 2, Veronica  
10 Michelle Benavidez, will be struck by the defendants  
11 exercising their tenth and final peremptory  
12 challenge, their only peremptory challenge of round  
13 6.

14 That will conclude the defendants'  
15 participation in round 6. And the Government has  
16 one peremptory challenge, their sixth overall  
17 peremptory challenge, their final peremptory  
18 challenge.

19 Ms. Armijo, how does the Government  
20 exercise its sixth and final peremptory challenge?

21 MS. ARMIJO: Number 23, Your Honor.

22 THE COURT: Juror number 23, Rebecca B.  
23 Hournbuckle, will be struck by the Government,  
24 exercising its sixth peremptory challenge, its only  
25 peremptory challenge in round 6, and its final

1 peremptory challenge.

2 That concludes the Government's  
3 participation in round 6, it concludes round 6.

4 I'm now going to confirm the jury, and  
5 then I'll give you the tentative alternates.

6 Juror number 1 will be prospective juror  
7 number 4, Koreena M. Taylor.

8 Juror number 2 will be prospective juror  
9 number 5, Dora H. Quinones.

10 Juror number 3 will be prospective juror  
11 number 8, Norah E. Harris.

12 Juror number 4 will be prospective juror  
13 number 9, Sylvia Sauer.

14 Juror number --

15 MS. JACKS: 5.

16 THE COURT: Juror number 5 will be  
17 prospective juror number 26, Stanley Carl Dixon.

18 Juror number 6 will be prospective juror  
19 number 27, Ellen Raina Wojcik.

20 Juror number 7 will be prospective juror  
21 number 28, Willis H. Schoonover, Jr.

22 Juror number 8 will be prospective juror  
23 number 29, Jesus U. Becerra.

24 Juror number 9 will be prospective juror  
25 number 35, Laura Deanne May.

1 Juror number 10 will be prospective juror  
2 number 37, Cameron William Johnston.

3 Juror number 11 will be prospective juror  
4 number 46, Ramona L. Becker.

5 And the final juror will be prospective  
6 juror number 50, Anastasia Wolfe.

7 And for the present time, Juror number 51,  
8 Christopher J. Gallegos will be the first alternate.

9 Juror number -- alternate number 2 will be  
10 prospective juror number 52, Faith Ann Smith.

11 Alternate number 3 will be prospective  
12 juror number 54, Daedalus P. Laroche.

13 And alternate number 4 will be prospective  
14 juror number 55, Carolyn M. McAdams.

15 Ms. Armijo, have I correctly confirmed the  
16 jurors and the first four tentative alternates?

17 MS. ARMIJO: Your Honor, I thought that we  
18 were going to get six strikes and then three strikes  
19 for alternates.

20 THE COURT: Well, you had six peremptory  
21 challenges. Have I correctly confirmed the jury?

22 MS. ARMIJO: Yes.

23 THE COURT: And now the four alternates  
24 that we're about to exercise peremptory challenges  
25 against, have I correctly confirmed those.

1 MS. ARMIJO: Yes.

2 THE COURT: Ms. Duncan, on behalf of the  
3 defendants, have I correctly confirmed the jury?

4 MS. DUNCAN: Yes, Your Honor.

5 THE COURT: And the four alternates that  
6 we're about to exercise peremptory challenges to?

7 MS. DUNCAN: Yes, Your Honor.

8 THE COURT: All right. We will have three  
9 rounds. The Government will lead off round 1, and  
10 each side will have one peremptory challenge. I  
11 need two more alternates. All right. So juror --  
12 alternate number 5 will be prospective juror number  
13 56, Rosela T. Gonzalez. And alternate number 6 will  
14 be prospective juror number 57, Rebecca L. Minton.

15 Now have I correctly confirmed the six  
16 alternates before beginning to exercise their  
17 peremptory challenges? Ms. Armijo?

18 MS. ARMIJO: I believe so, Your Honor.  
19 Just so that we're clear, we're starting with number  
20 51; correct?

21 THE COURT: Correct. But I've correctly  
22 confirmed the jury and the six alternates, Ms.  
23 Armijo?

24 MS. ARMIJO: Yes, Your Honor.

25 THE COURT: And Ms. Duncan, have I now

1 correctly confirmed the jury and the six alternates.

2 MS. DUNCAN: You have, Your Honor.

3 THE COURT: So we'll do three rounds. The  
4 Government will lead off round 1. Each side will  
5 have one peremptory challenge in each round, and  
6 they could be exercised against jurors number 51,  
7 52, 54, 55, 56, and 57.

8 Let's go to round 1. The Government leads  
9 off round 1. The Government has one peremptory  
10 challenge in round 1 to be exercised against the  
11 proposed alternates, and the defendants have one  
12 peremptory challenge in round 1 to be exercised  
13 against the proposed alternates.

14 Ms. Armijo, does the Government wish to  
15 exercise its peremptory challenge against the six  
16 proposed alternates?

17 MS. ARMIJO: Yes, Your Honor. Number 57.

18 THE COURT: Juror number 57, Rebecca L.  
19 Minton, will be struck by the Government exercising  
20 its first peremptory challenge against alternates.  
21 That concludes the Government's participation in  
22 round 1.

23 And the defendants have one peremptory  
24 challenge in round 1. Ms. Duncan, how do the  
25 defendants exercise their first peremptory challenge

1 against the alternates and their only peremptory  
2 challenge in round 1?

3 MS. DUNCAN: Your Honor, juror 52, Faith  
4 Smith.

5 THE COURT: Juror number 52, Faith Smith,  
6 will be struck by the defendants exercising their  
7 first peremptory challenge as to alternates.

8 That concludes the defendants'  
9 participation in round 1, it concludes round 1.

10 Go to round 2. The defendants lead off  
11 round 2. They have one peremptory challenge to be  
12 exercised against the alternates. Let me confirm  
13 the two new alternates here before we start this  
14 round. So alternate number 1 is Number 51. We  
15 struck alternate number 2, so Laroche becomes  
16 alternate number 2, and Carolyn McDaniels (sic)  
17 becomes alternate number 3. And Rosela Gonzalez,  
18 juror number 56, becomes alternate number 4. And  
19 Michael Wayne Moore becomes alternate number 5. And  
20 juror number 61, Richard Anthony Houghtalin, becomes  
21 alternate number 6.

22 All right. Ms. Duncan, how do the  
23 defendants exercise their peremptory challenge  
24 against the six proposed alternates?

25 MS. DUNCAN: Your Honor, juror number 56,

1 Rosela Gonzalez.

2 THE COURT: Juror number 56, Rosela T.  
3 Gonzalez, will be struck by the defendants  
4 exercising their second peremptory challenge. That  
5 concludes the defendants' participation in round 2.

6 The Government has one peremptory  
7 challenge in round 2, its second overall peremptory  
8 challenge. Let me confirm that juror number 62 is  
9 now going to be alternate number 61. Richard  
10 Anthony Houghtalin is now alternate number 5, and  
11 Michael Wayne Moore is number 4. The first three  
12 remain the same.

13 MS. ARMIJO: Number 61.

14 THE COURT: Number 61. So the Government  
15 exercises its second peremptory challenge against  
16 juror number 61, the fifth alternate.

17 So that now makes Sheryl Lee Liebhart the  
18 fifth alternate, and now makes juror number 63,  
19 Bridget Murphy, the sixth alternate.

20 So that concludes round 5. We go to round  
21 6. This is the final round of challenges against  
22 the alternates. The Government leads off this round  
23 and has one peremptory challenge, its third overall  
24 peremptory challenge and its final peremptory  
25 challenge. The defendants have one more peremptory

1 challenge, as well, and it will be their third  
2 overall peremptory challenge.

3 So Ms. Armijo, how does the Government  
4 exercise its only peremptory challenge for round 3,  
5 its third overall peremptory challenge as to  
6 alternates, and its final challenge to alternates?

7 MS. ARMIJO: Number 62.

8 THE COURT: Juror number 62, Sheryl Lee  
9 Liebhart, will be struck by the Government  
10 exercising its third peremptory challenge and its  
11 final peremptory challenge as to the alternates.

12 So let me confirm now that the remaining  
13 alternates -- Bridget Murphy, becomes alternate  
14 number 5 and Brittany Courtier becomes alternate  
15 number 6.

16 How do the defendants exercise their only  
17 peremptory challenge of round 3, their third overall  
18 peremptory challenge, and their final peremptory  
19 challenge against the alternates?

20 MS. DUNCAN: Your Honor, we excuse juror  
21 number 51, Christopher Gallegos.

22 THE COURT: All right. So juror number 51  
23 will be struck by the defendants exercising their  
24 third peremptory challenge and their final  
25 peremptory challenge. That concludes the



1 defendants' participation in round 3. It concludes  
2 round 3.

3 Let me now confirm who the three  
4 alternates will be. The first alternate will be  
5 juror number 54, Laroche.

6 Juror number -- alternate number 2 will be  
7 prospective juror number 55, Carol M. McAdams.

8 Alternate number 3 will be prospective  
9 juror number 60, Michael Wayne Moore.

10 Juror number 4 will be prospective juror  
11 number 63, Bridget Murphy.

12 Alternate number 5 will be prospective  
13 juror number 64, Brittany Courtier.

14 And alternate number 6 will be prospective  
15 juror number 66, Bridget Bush.

16 Have I correctly confirmed the alternates  
17 for the jury, Ms. Armijo?

18 MS. ARMIJO: Yes, you have, Your Honor.

19 THE COURT: On behalf of the defendants,  
20 have I correctly confirmed the jury's alternates,  
21 Ms. Duncan?

22 MS. DUNCAN: Yes, Your Honor.

23 THE COURT: Is everyone now in agreement  
24 as to who the jury will be for this trial? Ms.  
25 Armijo?

1 MS. ARMIJO: Yes, Your Honor.

2 THE COURT: On behalf of the defendants,  
3 Ms. Duncan?

4 MS. DUNCAN: Yes, Your Honor.

5 THE COURT: All right. It's 5:15. We can  
6 go a couple of ways. We can bring the jury in and  
7 seat the jury. A, we could swear them in tonight  
8 and I could give them the preliminary instruction  
9 and some other instructions that they're now going  
10 to have to focus on.

11 What's your thoughts about proceeding that  
12 way, and then I can go release all the other jurors?  
13 Mr. Castellano?

14 MR. CASTELLANO: Your Honor, I would  
15 recommend if we're going to send them home for the  
16 night, not swearing them in and empaneling them. If  
17 something happens, jeopardy will have attached. I  
18 would rather just do it in the morning. We save any  
19 problems with jeopardy at that point.

20 THE COURT: Well, what if I went ahead and  
21 instructed them? What's y'all's thoughts? What's  
22 the defendants' thoughts?

23 MS. DUNCAN: I think that the defendants  
24 would prefer that you seat and swear the jury.

25 THE COURT: And go ahead and give them the

1 instructions?

2 MS. DUNCAN: At the very least to give  
3 them instructions not to see media. Whatever the  
4 Court's discretion, but to advise them to avoid  
5 publicity about this case.

6 THE COURT: Well, I think that's mixed in  
7 to the preliminary, so why don't I just go ahead and  
8 give the preliminary, and then I'm going to give  
9 them some additional, because we need to talk to  
10 them about the media a whole lot here. So I think I  
11 will swear them in, instruct them, and then we can  
12 start with openings in the morning.

13 All right. So if there is nothing else to  
14 discuss, all rise. We'll bring in the jury.

15 (Venire panel entered the courtroom.)

16 THE COURT: All right. Everyone be  
17 seated.

18 Ladies and gentlemen, I want to tell that  
19 you've been a wonderful bunch. We're about to seat  
20 the jury, and some of you are going to be with us  
21 for a while, and others of you are going to get to  
22 go home. And when I get done here, I'm going to  
23 step out there and tell group 2 that they can go.  
24 I've already talked to group 3. And I'd love to  
25 tell you personally, thank you for your service, if

1 you're not going to be called for service.

2 But I really appreciate it. You really  
3 have answered a lot of questions, you were very  
4 gracious with us, and you were very kind. I think I  
5 speak for all the attorneys and the parties, and  
6 certainly the Court, that we really couldn't do what  
7 we do here in Federal Court if you hadn't done what  
8 you did starting on Sunday and here late in the day  
9 on Monday, Tuesday. So thank you very much, for  
10 those of you who I may not see again.

11 All right. Ms. Wild is going to call out  
12 the names of the jurors who are going to be seated  
13 for this case. If your name is called and when your  
14 name is called, if you will come and be seated in  
15 the order in the jury box. So Juror number 1 is  
16 going to sit closest to me and sit closest to the  
17 witness here, and then second on down. And of  
18 course, we've got some extended rows, so we're going  
19 to have nine in the front row, and then we'll start  
20 with Juror number 10 right behind Number 1, and go  
21 out to 18.

22 Bring your belongings. We're going to  
23 work a little bit longer this evening to get  
24 started, get the trial started, but we won't keep  
25 you very late, so if you're called, bring your

1 belongings because you are going to need to listen  
2 to some instructions from the Court before we break  
3 up for the evening.

4 Ms. Wild.

5 THE CLERK: Koreena M. Taylor. Dora H.  
6 Quinones. Daedalus P. Laroche. Norah E. Harris.  
7 Sylvia Sauer. Carolyn M. McAdams. Stanley Carl  
8 Dixon. Ellen Raina Wojcik. Michael Wayne Moore.  
9 Willis H. Schoonover.

10 THE COURT: I think the first row can sit  
11 down, if you want to. Now we'll work with the back  
12 row.

13 THE CLERK: Jesus U. Becerra. Bridget  
14 Murphy. Lora Deanne May. Cameron William Johnston.  
15 Brittany Courtier. Ramona L. Becker. Anastasia  
16 Wolfe. Bridget Bush.

17 THE COURT: It will be easier getting in  
18 and out from here on out, but we do have to keep  
19 everybody in order right now to create some charts  
20 for everybody.

21 All right, ladies and gentlemen. The  
22 jurors that are in the jury box will be the jurors  
23 for this trial. For the rest of you, I want to  
24 again thank you for your hard work. I will be  
25 talking to the jury a little bit, and then I'm going

1 to step out and thank any of you that remain, and  
2 also those people that are in group 2, I'm going to  
3 speak with them and let them go here in a minute.

4 But again, thank you for all you did for  
5 us. You're a wonderful group, you're a gracious  
6 group, you did everything we asked you to do. So I  
7 appreciate it. I know some of you got some travels.  
8 Thank you so much for what you have done for us and  
9 what you did starting on Sunday.

10 All right. I'll ask everybody to rise in  
11 respect for the jurors that are about to leave the  
12 courtroom.

13 (The venire panel left the courtroom.)

14 THE COURT: Are counsel prepared for the  
15 Court to swear in the jury? Ms. Armijo?

16 MS. ARMIJO: Yes, Your Honor.

17 THE COURT: Counsel for the defendants?

18 MS. DUNCAN: Yes, Your Honor.

19 THE COURT: All right. Ladies and  
20 gentlemen, if you'll raise your right hand, Ms. Wild  
21 will swear you in.

22 (The jury was duly sworn.)

23 THE COURT: Is there anyone that did not  
24 say "I do"? All right. Be seated.

25 I'm not going to keep you long. It's late

1 in the day, but I do want to go ahead and give you  
2 some instructions, and I'm going to talk to you a  
3 little bit more about something that you've already  
4 heard something about, and I'm going to talk to you  
5 a little bit about something, and then we'll get you  
6 out of here.

7 Members of the jury, at the end of the  
8 trial I will give you detailed guidance on the law  
9 and how you will go about reaching your decision.  
10 But now I simply want to generally explain how the  
11 trial will proceed.

12 This criminal case has been brought by the  
13 United States Government. I will sometimes refer to  
14 the Government as the prosecution. The Government  
15 is represented by Assistant United States Attorneys  
16 Maria Armijo, Randy Castellano and Matthew Beck.

17 The defendant Daniel Sanchez is  
18 represented by his lawyers, Amy Jacks and Richard  
19 Jewkes.

20 The defendant Anthony Ray Baca is  
21 represented by his lawyers Marc Lowry and Theresa  
22 Duncan.

23 Defendant Carlos Herrera is represented by  
24 his lawyers, Carey Bhalla and William Maynard.

25 The defendant Rudy Perez is represented by

1 his lawyers Ryan Villa and Justine Fox-Young.

2 The indictment charges Mr. Sanchez, Mr.  
3 Baca, Mr. Herrera, and Mr. Perez with violent crimes  
4 in aid of racketeering, murder, and with violent  
5 crimes in aid of racketeering, conspiracy to murder;  
6 and also charges Mr. Baca with violent crimes in aid  
7 of racketeering, conspiracy to commit assault  
8 resulting in serious bodily injury.

9 The indictment is simply the description  
10 of the charges made by the Government against  
11 Mr. Sanchez, Mr. Baca, Mr. Herrera, and Mr. Perez.  
12 It is not evidence of guilt or anything else. Mr.  
13 Sanchez, Mr. Baca, Mr. Herrera, and Mr. Perez  
14 pleaded not guilty and are presumed innocent. They  
15 may not be found guilty by you unless all 12 of you  
16 unanimously find that the Government has proved  
17 their guilt beyond a reasonable doubt.

18 The first step in the trial will be the  
19 opening statements. The Government in its opening  
20 statement will tell you about the evidence which it  
21 intends to put before you. Just as the indictment  
22 is not evidence, neither is the opening statement.  
23 Its purpose is only to help you understand what the  
24 evidence will be. It is a road map to show you what  
25 is ahead.

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1 After the Government's opening statement,  
2 Mr. Sanchez', Mr. Baca's, Mr. Herrera's, and Mr.  
3 Perez' attorneys may make an opening statement.

4 Evidence will be presented from which you  
5 will have to determine the facts. The evidence will  
6 consist of the testimony of the witnesses, documents  
7 and the other things received into the record as  
8 exhibits and any facts about which the lawyers agree  
9 or to which they stipulate.

10 The Government will offer its evidence.  
11 After the Government's evidence, Mr. Sanchez', Mr.  
12 Baca's, Mr. Herrera's and Mr. Perez' lawyers may  
13 present evidence, but they are not required to do  
14 so.

15 I remind you that that Mr. Sanchez, Mr.  
16 Baca, Mr. Herrera, and Mr. Perez are presumed  
17 innocent, and it is the Government that must prove  
18 Mr. Sanchez', Mr. Baca's, Mr. Herrera's and Mr.  
19 Perez' guilt beyond a reasonable doubt. If Mr.  
20 Sanchez, Mr. Baca, Mr. Herrera, and Mr. Perez submit  
21 evidence, the Government may introduce rebuttal  
22 evidence.

23 At times during the trial, a lawyer may  
24 make an objection to a question asked by another  
25 lawyer or to an answer by a witness. This simply

1 means that the lawyer is requesting that I make a  
2 decision on a particular rule of law. Do not draw  
3 any conclusion from such objections or from my  
4 rulings on the objections. If I sustain an  
5 objection to a question, the witness may not answer  
6 it. Do not attempt to guess what answer might have  
7 been given if I had allowed the answer. If I  
8 overrule the objection, treat the answer as any  
9 other. If I tell you not to consider a particular  
10 statement, you may not refer to that statement in  
11 your later deliberations.

12 Similarly, if I tell you to consider a  
13 particular piece of evidence for a specific purpose,  
14 you may consider it only for that purpose.

15 During the course of the trial I may have  
16 to interrupt the proceedings to confer with the  
17 attorneys about the rules of law that should apply.  
18 Sometimes we will talk briefly at the bench. But  
19 some of these conferences may take more time, so I  
20 will excuse you from the courtroom. I will try to  
21 avoid such interruptions whenever possible, but  
22 please be patient, even if the trial seems to be  
23 moving slowly, because conferences often actually  
24 save time in the end.

25 You are to consider all the evidence

1 received in this trial. It will be up to you to  
2 decide what evidence to believe and how much of any  
3 witness' testimony to accept or reject. After you  
4 have heard all the evidence on both sides, I will  
5 instruct you on the rules of law which you are to  
6 use in reaching your verdict.

7 The final part of the trial occurs when  
8 the Government and Mr. Sanchez, Mr. Baca, Mr.  
9 Herrera, and Mr. Perez will each be given time for  
10 their final arguments.

11 During the course of the trial, I may ask  
12 a question of a witness. If I do, that does not  
13 indicate I have any opinion about the facts in the  
14 case, but I am only trying to bring out facts that  
15 you may consider.

16 If you would like to take notes during the  
17 trial, you may. On the other hand, you are not  
18 required to take notes. If you do decide to take  
19 notes, be careful not to get so involved in  
20 note-taking that you become distracted; and remember  
21 that your notes will not necessarily reflect exactly  
22 what was said, so your notes should be used only as  
23 memory aids. Therefore, you should not give your  
24 notes precedence over your independent recollection  
25 of the evidence. You should also not be unduly

1 influenced by the notes of other jurors. If you do  
2 take notes, leave them in the jury room at night and  
3 do not discuss the contents of your notes until you  
4 begin deliberations.

5 To find Mr. Sanchez, Mr. Baca, Mr.  
6 Herrera, and Mr. Perez guilty of the crime of  
7 committing violent crimes in aid of racketeering,  
8 you must be convinced that the Government has proved  
9 each of the following beyond a reasonable doubt.

10 First, the existence of an enterprise as defined in  
11 18 USC 1959(b)(2).

12 Second, the charged enterprise engaged in  
13 or its activities affected interstate or foreign  
14 commerce.

15 Third, the charged enterprise engaged in  
16 racketeering activity as defined in 18 USC Sections  
17 959(b)(1) and 1961(1).

18 Fourth, Mr. Sanchez, Mr. Baca, Mr.  
19 Herrera, and Mr. Perez committed one of the  
20 following crimes or conspired or attempted to commit  
21 one of these crimes, which crime violated state or  
22 federal laws: Murder and assault resulting in  
23 serious bodily injury.

24 And fifth, the crime of violence was  
25 committed either, one, as consideration for the

1 receipt of or as consideration for a promise or  
2 agreement to pay anything of pecuniary value from  
3 the charged enterprise; or two, for the purpose of  
4 gaining entrance to or maintaining or increasing  
5 position in the charged enterprise.

6 Ordinarily the attorneys will develop all  
7 the relevant evidence that will be necessary for you  
8 to reach your verdict. However, in rare situations,  
9 a juror may believe that a question is critical to  
10 reaching a decision on a necessary element of the  
11 case. In that exceptional circumstance, you may  
12 write out a question and provide it to the courtroom  
13 deputy while the witness is on the stand. I will  
14 then consider that question with the lawyers. If it  
15 is determined to be a proper and necessary question,  
16 I will ask it. If I do not ask it, you should  
17 recognize that I have determined it is not a legally  
18 appropriate question and not worry about why it was  
19 not asked or what the answer would have been.

20 During the course of the trial, you should  
21 not talk with any witness or with Mr. Sanchez, Mr.  
22 Baca, Mr. Herrera, and Mr. Perez, or with any of the  
23 lawyers at all. In addition, during the course of  
24 the trial you should not talk about the trial with  
25 anyone else. Do not discuss the case with anyone or

1 provide any information about the trial to anyone  
2 outside the courtroom until the verdict is received.  
3 Do not use the internet or any other form of  
4 electronic communication to provide any information.  
5 Simply put, do not communicate with anyone about the  
6 trial until your verdict is received.

7           Also, you should not discuss this case  
8 among yourselves until I have instructed you on the  
9 law and you have gone to the jury room to make your  
10 decision at the end of the trial. It is important  
11 that you wait until all the evidence is received and  
12 you have heard my instructions on the controlling  
13 rules of law before you deliberate among yourselves.

14           Let me add that during the course of the  
15 trial, you will receive all the evidence you  
16 properly may consider to decide the case. Because  
17 of this, you should not attempt to gather any  
18 information or do any research on your own. Do not  
19 attempt to visit any places mentioned in the case,  
20 either actually or on the internet, and do not in  
21 any other way try to learn about the case outside  
22 the courtroom.

23           The court reporter is making stenographic  
24 notes of everything that is said. This is basically  
25 to assist any appeals. However, a typewritten copy

1 of the testimony will not be available to you for  
2 your use during deliberations. On the other hand,  
3 any exhibits will be available to you during your  
4 deliberations.

5 Now that the trial will begin, you must  
6 not hear or read about it in the media. The reason  
7 for this is that your decision in this case must be  
8 made solely on the evidence presented at the trial.

9 And we'll introduce Ms. Armijo tomorrow  
10 and she can present her opening statement for the  
11 Government tomorrow.

12 Let me give you the instruction I've given  
13 you since the first day, the first morning, and I'm  
14 going to remind you of these because there are a few  
15 things that are especially important. And now that  
16 you're the jurors, you need to take them to heart.  
17 And I know you have already, but listen to them  
18 again because you're now the jurors for this trial.

19 Until the trial is completed, you are not  
20 to discuss this case with anyone, whether it's  
21 members of your family, people involved in the  
22 trial, or anyone else, and that includes your fellow  
23 jurors.

24 If anyone approaches and tries to discuss  
25 the trial with you, please let me know about it

1 immediately.

2 Also, you must not read or listen to any  
3 news reports of the trial. Again, don't go home  
4 and get on the internet and do any research for  
5 purposes of this case.

6 And finally, remember that you must not  
7 talk about anything with any person who is involved  
8 in the trial sitting at these tables, even if it  
9 doesn't have anything to do with the trial.

10 If you need to speak with me, simply give  
11 a note to one of the court security officers.  
12 They're the people in blue. If you haven't gotten  
13 used to them by now, the blue jackets; or the  
14 courtroom deputies. You're going to hear these  
15 tomorrow a lot. We've got to get off to a solid  
16 start. We just can't have a six-to-eight-week trial  
17 and not get off to a solid start. So bear with me.  
18 I'll quit giving these instructions at some point, I  
19 promise, but I am going to say them at the beginning  
20 so you understand how important they are to the  
21 Court, to you, and to everybody else.

22 Because we're before the trial -- the  
23 trial has started now that we've sworn you in and  
24 instructed you, but before we start the evidentiary  
25 portion and the opening statements tomorrow, let me

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1 leave you with one final instruction.

2           You as jurors must decide this case based  
3 solely on the evidence presented here within these  
4 four walls. This means that during the trial, you  
5 must not conduct any independent research about this  
6 case, the matters in the case, and the individuals  
7 or corporations involved in the case. In other  
8 words, you should not consult dictionaries or  
9 reference materials, search the internet, websites,  
10 blogs, or use any other electronic tools to obtain  
11 information about this case or to help you decide  
12 the case. Please do not try to find out information  
13 from any source outside the confines of this  
14 courtroom.

15           Until you retire to deliberate -- and that  
16 will be a very precise moment in our court -- you  
17 may not discuss this case with anyone, even your  
18 fellow jurors. After you retire to deliberate, you  
19 may begin discussing the case with your fellow  
20 jurors, but you still can't discuss the case with  
21 anyone else until you have returned a verdict and  
22 the case is at an end, and I'll tell you what you  
23 can do at that point.

24           I know that many of you have cell phones.  
25 They used to say BlackBerries, but I think the

1 Government is the only one that uses BlackBerries  
2 anymore; the internet and other tools of technology.  
3 You also must not talk to anyone at any time about  
4 this case or use these tools to communicate  
5 electronically with anyone about the case. This  
6 includes your family and friends. You may not  
7 communicate with anyone about this case on your  
8 cellphone, through email, Blackberry, iPhone, text  
9 messaging, or on Twitter, through any blog or  
10 website, including Facebook, Google Plus, My Space,  
11 LinkedIn, or YouTube. You may not use any similar  
12 technology of social media, even if I have not  
13 specifically mentioned it. I've had jurors listen  
14 to those very same instructions and walk out and  
15 post something on the internet about their jury  
16 duty. Don't do that. Don't do that. Stay off.  
17 Don't put anything on Facebook about what you're  
18 doing.

19 I expect you will inform me as soon as you  
20 become aware of another juror's violation of these  
21 instructions. I hope that for all of you this case  
22 is interesting and noteworthy.

23 All right, ladies and gentlemen, you've  
24 worked hard for two days. I know you're going to  
25 have to get a little bit of your life in order, so

1 we're going to let you out of here. Thank you for  
2 your hard work. What I'll be asking you to do, so  
3 we keep this case going, keep it on the track that  
4 it needs to go on, if you'll be in the jury room --  
5 you'll be shown this here before you leave; I know  
6 you haven't been there -- if you'll be in the jury  
7 room at 8:30 every morning. So try to be there  
8 about 8:15 so we can get started at 8:30. I will  
9 try to keep us going. I'll try to keep us starting  
10 on time so you're not waiting. Sometimes I have to  
11 talk to the lawyers and the parties before I bring  
12 you in, but I'll try to keep it on track. So if  
13 you're here on time, I'll try to get started on  
14 time. This is a little bit later than what I hope  
15 to run, so we couldn't plan it, but we'll try to  
16 plan it so we can get you out of here at least by  
17 5:30 every afternoon.

18 I look forward to working with you. You  
19 look like a great bunch, been a great bunch for two  
20 days. Thank you for all your service. We'll see  
21 you at 8:30 in the morning. All rise.

22 (The jury left the courtroom.)

23 THE COURT: All right. I appreciate  
24 everyone's hard work. We'll see you at 8:30 and  
25 start with the Government's opening statement.

1 MS. ARMIJO: Your Honor, Mr. Castellano  
2 has something to bring up.

3 MR. CASTELLANO: Your Honor, the defense  
4 had made a request of the presentence reports that  
5 have been prepared for any of the witnesses in this  
6 case. We typically see that as the Court's  
7 confidential document. So I think what we're going  
8 to ask the Court to do is to review those PSRs and  
9 then disclose whatever the Court thinks is necessary  
10 for purposes of Giglio or Jencks. I've seen the  
11 Court do it before.

12 THE COURT: Well, you got access to these,  
13 as well; right?

14 MR. CASTELLANO: We do.

15 THE COURT: Why don't y'all make a run at  
16 it and see what it looks like, see if I need to see  
17 anything. If y'all get these and everybody in this  
18 room knows what a PSR looks like, knows all the  
19 sections, if somebody -- y'all talk about it. If  
20 y'all can't agree, then I'll look at some sections  
21 and see if there is anything there. Why don't you  
22 make your first Brady and Giglio cut.

23 MR. CASTELLANO: Sounds good, Your Honor.

24 MR. VILLA: Briefly, Judge, with respect  
25 to witness order and the Court order, the Government

1 would tell us the day before, so we'd like to know  
2 the witness order for tomorrow.

3 THE COURT: Y'all let them know before you  
4 leave?

5 MS. ARMIJO: They already know the  
6 witnesses for tomorrow, because we told them on  
7 Sunday. I think -- how long are openings going to  
8 be?

9 MS. JACKS: Mine is about 30 minutes.

10 MS. ARMIJO: Mine is going to be about 30  
11 minutes.

12 THE COURT: Let's see.

13 MS. ARMIJO: I think we allotted an hour,  
14 but I think it will be 30 minute or so, or less.

15 THE COURT: Let me see what everybody  
16 agreed to. I'm looking at arguments that y'all  
17 collectively asked for about three -- about three  
18 hours and 35 minutes. All right. Do y'all know  
19 your witnesses now, knowing that it's probably going  
20 to take the morning, go into the afternoon? All  
21 right.

22 Y'all have a good evening, appreciate your  
23 hard work.

24 Before we go off the record, let me tell  
25 you one thing. Let me give you this one thing. If

1 Ms. Wild were here, you might, when she comes in,  
2 get this exactly straight. But the marshals are  
3 going to try to let the defense lawyers in first and  
4 they're going to try to do it at 7:30. I'm not  
5 going through the clerk's office and that sort of  
6 stuff. It's the marshals that are doing this for  
7 you.

8 At the same time, the trade-off is: Would  
9 you kind of agree to a time that y'all would get out  
10 of the courtroom? I know y'all have to talk and  
11 stuff like that. So that's kind of the trade-off.  
12 I'll get you in early, they will be here at 7:30, if  
13 you want. If you want it a little bit later, that's  
14 fine. They're not going to let the jurors in any  
15 earlier. I should have told them that. But they'll  
16 let y'all in. You'll have to go through the search,  
17 but they'll let you in a little bit early. If you  
18 want to back it up so that you're in here at 7:30,  
19 that's fine. But if you can kind of think about it  
20 tonight and tell them when you'll kind of commit to  
21 being out of here, it will help them staffing the  
22 vans and getting people in and out of here.

23 All right? Y'all have a good evening.  
24  
25


1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3  
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 3rd day of February, 2019.

13  
14   
15 Jennifer Bean, FAPR, RMR-RDR-CCR  
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17 United States Court Reporter  
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